The California Commission on Health and Safety and Workers' Compensation



CARVE-OUTS A GUIDEBOOK FOR UNIONS AND EMPLOYERS IN WORKERS' COMPENSATION

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May 2004

How to Use This Carve-Out Guidebook

California has an exciting opportunity to serve as a national leader in the areas of worker protection, benefits, and reduced costs, as well as increased benefits for employers.

Carve-outs provide an alternative to the dispute resolution procedures in the state workers' compensation system. Carve-outs were developed to provide the opportunity to establish an improved benefit-delivery system for injured workers and to encourage labor and management to collaborate toward this end.

A carve-out offers more efficient responses to safety, dispute rates, and costs. These are benefits for all participants in the workers' compensation system – unions, employers, workers, and workers' compensation administration.

This Guide presents an overview of the role of carve-outs in the California workers' compensation system, including the history of carve-outs and the legislative mandates providing for carve-outs. In addition, the Guide provides an outline of the process for establishing a carve-out and describes the roles and responsibilities of each participant in a carve-out.

This Guide has been developed to:

- ?? Help unions, employers, and workers understand the role and benefits of a carve-out in providing workers' compensation benefits.
- ?? Identify the steps that unions and employers should take to establish a carve-out.
- ?? Identify ways that unions and employers can work together to create an effective carve-out.

This Guide cannot cover all possible situations faced by injured workers; therefore, additional resources are listed in the Appendix sections "The Workers' Compensation Process: Frequently Asked Questions" and "For More Information and Help: A Resource Guide."

Workers' compensation resources include governmental agencies, attorneys, health care providers, unions, and support groups, as well as books and materials. These resources can help injured workers understand the workers' compensation system and how to get help with their individual case.

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Acknowledgements

We would like to thank Juliann Sum, Esq., of the Institute of Industrial Relations, University of California at Berkeley, for feedback and useful comments on this guide.

We are also grateful for feedback from Dan Hall, attorney for the Carpenters' Trust, Jay Hansen administrator of ADR programs for the State Compensation Insurance Fund (SCIF), southern California, Eric Nobriga, group sales manager for SCIF, and Richard Robyn, ombudsman.

Chapter I - The Workers' Compensation System¹

What is workers' compensation?

If an employee gets hurt on the job, the employer is required by law to pay for workers' compensation benefits. An employee could get hurt by:

?? **One event at work.** Examples: a back injury resulting from a fall, getting burned by a chemical that splashes on the skin, getting hurt in a car accident while making deliveries.

or

?? **Repeated exposures at work.** Examples: a wrist injury from doing the same motion over and over; a loss of hearing because of constant loud noise.

Workers' compensation covers some, but not all, stress-related (psychological) injuries caused by your job. For information about what is covered, use the resources in the Appendix, "For More Information and Help."

What are workers' compensation benefits?

Benefits can include:

- ?? **Medical Care.** Paid for by the employer to help the employee recover from an injury or illness caused by work.
- ?? **Temporary Disability Benefits.** Payments if an employee loses wages because an injury prevents the employee from doing his/her usual job while recovering.
- ?? **Permanent Disability Benefits.** Payments if there is not a complete recovery and the employee will be limited in the kinds of work that can be done.
- ?? Vocational Rehabilitation /Supplemental Job Displacement Benefit (SJDB). Although mandatory rehabilitation has been repealed, voluntary rehabilitation or retraining may still be negotiated under a carve-out. Improved opportunities for returning to work with the employer in a carve-out may reduce the likelihood that an employee has to resort to the SJDB in an attempt to find other work.
- ?? **Death Benefits.** Payments to an employee's spouse, child(ren), or other dependents if the death is due to a job injury or illness.

¹ This section was adapted from "Workers' Compensation in California A Guidebook for Injured Workers," prepared for the Commission on Health and Safety and Workers' Compensation by the Institute of Industrial Relations (IIR), University of California at Berkeley and the Labor Occupational Health Program (LOHP), Center for Occupational and Environmental Health, School of Public Health, University of California at Berkeley, 2002.

Did you know? Additional facts about workers' compensation

- ?? Medical care must be paid for by the employer if an employee gets hurt on the job whether or not the employee misses time from work.
- ?? An employee may be eligible to receive benefits even if a temporary or part-time worker.
- ?? An employee may be covered by workers' compensation as an employee even if called an "independent contractor."
- ?? An employee does not have to be a legal resident to receive most workers' compensation benefits.
- ?? An employee receives benefits no matter who was at fault for the job injury.
- ?? An employee cannot sue an employer for a job injury (in most cases).
- ?? It is illegal for an employer to punish or fire an employee for having a job injury or for requesting workers' compensation benefits when the employee believes the injury was caused by his/her job.

Chapter II - A History of Carve-out Legislation in California

TIMELINE:

?? 1993 – Senate Bill 983, Labor Code section 3201.5

Permitted employers and employees in the construction and related industries to engage in collective bargaining for alternative workers' compensation procedures.

?? 1994 – Senate Bill 853, Labor Code section 3201.5

Required parties in a carve-out to submit evidence of eligibility and receive approval from the Administrative Director.

?? **2002 – Assembly Bill 749, Labor Code section 3201.7**

Permitted carve-outs in the aerospace and timber industries.

?? 2003 – Senate Bill 228, Labor Code section 3201.7

Provided for carve-outs in any unionized industry. Repealed AB 749.

?? 2004 – Senate Bill 899, Labor Code sections 3201.5 and 3201.7.

Employer and union may negotiate any aspect of benefit delivery if employees are eligible for group health and non-occupational disability benefits.

What is the history of carve-out legislation in California?

As detailed below, California workers' compensation reform legislation, Senate Bill (SB) 983, first provided for carve-outs in the construction industry and closely related industries. Later legislation, Assembly Bill (AB) 749, provided for carve-outs in the aerospace and timber industries, and then SB 228 repealed AB 749 and provided for carve-outs in all other industries in addition to construction, which is still covered by the initial legislation. The most recent legislation is SB 899, which provides that the employer and union may negotiate any aspect of benefit delivery under certain conditions.

?? 1993 Legislative Reform – Senate Bill 983

In 1993, California's workers' compensation reform legislation, SB 983, enacted as Labor Code section 3201.5, permitted employers and employees in construction and related industries to engage in collective bargaining over alternative systems to resolve disputes in workers' compensation. These systems are called carve-outs, because those employers and employees are carved out from the state workers' compensation system.

In 1994, SB 853 amended Labor Code section 3201.5 to tighten the qualifications of the parties involved in a carve-out. Parties are now required to submit evidence of their eligibility and receive a "letter of eligibility" from the Administrative Director (AD).

Although the parties must establish that they are eligible, they do not need the AD's approval of the collective bargaining agreement itself.

As set forth in Labor Code section 3201.5, unions and employers in construction are allowed to agree on the following through collective bargaining:

- ?? An alternative dispute resolution process in place of most hearings before a workers' compensation judge.
- ?? An mutually agreed upon list of medical providers and medical evaluators.
- ?? A mutually agreed upon list of vocational rehabilitation providers.

The statute mandated a number of requirements including:

- ?? That the carve-out process does not diminish compensation to injured workers.
- ?? That the alternative dispute resolution process retain the right to appeal to the reconsideration unit of the Workers' Compensation Appeals Board and, ultimately, to the state courts of appeal.

In 1994, SB 853 expanded the range of eligible employers in Labor Code section 3201.5 to include those in the rock, sand, gravel, cement and asphalt operations; heavy-duty mechanics; surveying; and construction inspection.

As shown in the following table, participation in the carve-out program grew during the period 1995 through 1999 with significant increases in the number of employees, work hours and amount of payroll.

Carve Out Participation	1995	1996	1997	1998	1999
Employers	242	277	550	683	442
Work Hours	6.9 million	11.6 million	10.4 million	18.5 million	24.8 million
Employees (full-time equivalent)	3,450	5,822	5,186	9,250	12,395
Payroll	\$157.6 million	\$272.4 million	\$242.6 million	\$414.5 million	\$585.1 million

Source: Division of Workers' Compensation

?? 2002 Legislative Reform – Assembly Bill 749

AB 749 established new Labor Code section 3201.7, which permitted carve-outs in the aerospace and timber industries. The provisions were essentially the same as those in section 3201.5 (construction industry carve-outs).

?? 2003 Legislative Reform – Senate Bill 228

SB 228 added new Labor Code section 3201.7 and repealed Labor Code section 3201.7 of AB 749. New section 3201.7 provides for a carve-out program in any unionized industry, in addition to the existing provision for carve-outs in construction (covered by section 3201.5).

Under 3201.7, only the union may initiate the carve-out process by petitioning the AD. The AD will review the petition according to the statutory requirements and issue a letter allowing each employer and labor representative a one-year window for negotiations. The parties may jointly request a one-year extension to negotiate the labor-management agreement.

Under 3201.7, no labor-management agreement may deny the right to representation by counsel at all stages during the alternative dispute resolution process.

?? 2004 Legislative Reform – Senate Bill 899

SB 899 amends Labor Code Sections 3201.5 and 3201.7, effective April 19, 2004.

Labor Code Sections 3201.5 and 3201.7 authorize parties to carve-out agreements to negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to the employees who are eligible for health care coverage for non-occupational injuries and illnesses through their employer.

SB 899 was approved by the Governor and chaptered on April 19, 2004. Due to an emergency clause in SB 899, its provisions are effective on the date of enactment.

Chapter III - Comparison: Carve-outs in Construction and in all Other Industries

CATEGORY	CONSTRUCTION	ALL OTHER INDUSTRIES
Initiation of Agreement	Jointly initiated by labor and management.	Union initiates with filing a petition with the Administrative Director.
Labor-Management Agreement	Negotiated with the collective bargaining agreement.	Negotiated separately from the collective bargaining agreement.
Union Qualifications	The union must meet the requirements that it is (1) the recognized or certified exclusive bargaining representative of the employees of the employer and actually represents the employees, (2) whose officers have been elected by secret ballot or otherwise in a matter consistent with federal law, and (3) that is free of domination or interference by any employer and has received no improper assistance or support from any employer.	The union must meet the requirements that it is (1) the recognized or certified exclusive bargaining representative of the employees of the employer and actually represents the employees, (2) whose officers have been elected by secret ballot or otherwise in a matter consistent with federal law, and (3) that is free of domination or interference by any employer and has received no improper assistance or support from any employer.
Employer Qualifications	The employer must have an annual workers' compensation premium of at least two hundred fifty thousand dollars (\$250,000) or more or the self-insured equivalent. Groups of employers must have annual workers' compensation premium of at least two million dollars (\$2,000,000) or the self-insured equivalent.	The employer must have an annual workers' compensation premium of at least \$50,000 or the self-insured equivalent. Groups of employers must have an annual workers' compensation premium of at least \$500,000 premium or the self-insured equivalent.

CATEGORY	CONSTRUCTION	ALL OTHER INDUSTRIES
Attorney Representation	The right to representation by counsel may be negotiated as part of the labor-management agreement.	The labor-management agreement must not deny the right of any employee to representation by counsel at all stages of the alternative dispute resolution process.

Chapter IV - Frequently Asked Questions About Carve-Outs

What is a carve-out?

A carve-out is an alternative to the dispute resolution procedures in the state workers' compensation system. A carve-out is created through a collective bargaining agreement.

The goals of a carve-out may include:

- ?? Improve safety programs and have fewer injury and illness claims.
- ?? Increase access to quality medical providers and medical evaluators.
- ?? Lower costs of medical care.
- ?? Reduce disputes.
- ?? Improve collaboration between unions and employers.
- ?? Increase satisfaction of all parties.
- ?? Provide the opportunity for continuous improvement by renegotiating the terms of the carve-out on an as-needed basis.

Who qualifies to enter into a carve-out?

Union – that meets the requirements that it is (1) a bona fide labor organization that is the recognized or certified exclusive bargaining representative of the employees of the employer and actually represents the employees in California as to wages, hours, and working conditions, (2) whose officers have been elected by secret ballot or otherwise in a matter consistent with federal law, and (3) that is free of domination or interference by any employer and has received no improper assistance or support from any employer. (Title 8, California Code of Regulations Section 10200.)

Employer in Construction Industry – The employer in the construction industry must have an annual workers' compensation premium of at least two hundred fifty thousand dollars (\$250,000) or more or the self-insured equivalent. Groups of employers must have annual workers' compensation premium of at least two million dollars (\$2,000,000) or the self-insured equivalent. (Labor Code section 3201.5.)

Employer in Industries other than Construction – The employer in industries other than construction must have an annual workers' compensation premium of at least \$50,000 or the self-insured equivalent. Groups of employers must have an annual workers' compensation premium of at least \$500,000 premium or the self-insured equivalent. (Labor Code section 3201.7)

What are some ways that labor and management could work together in a carve-out?

- ?? A labor-management agreement is negotiated separate and apart from any collective bargaining agreement covering affected employees.
- ?? The labor-management agreement is negotiated in accordance with the authorization of the AD between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:
 - ?? An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the reconsideration unit of the Workers' Compensation Appeals Board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge.
 - ?? The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided.
 - ?? The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators.
 - ?? A joint labor-management safety committee.
 - ?? A return-to-work program offering a light-duty modified job or alternative job.
 - ?? A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation/retraining services that may be the exclusive source of providers of rehabilitation/retraining services.
- ?? The labor-management agreement must not diminish the entitlement of an employee to compensation payments fully paid by the employer for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment.
- ?? The labor-management agreement must not deny the right of any employee to representation by counsel at all stages of the alternative dispute resolution process.

In addition, a carve-out agreement may provide for a separate fund to pay for the administration of the alternative dispute resolution programs. It may also create a committee with equal employer and union representation to supervise the carve-out and to hire an administrator and an ombudsman staff

What are the potential components of a carve-out?

- ?? Alternative dispute resolution process.
- ?? An agreed list of providers of medical treatment that may be the exclusive source of all medical treatment.
- ?? An agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators.
- ?? Joint labor-management safety committee.
- ?? A light-duty, modified job or return-to-work program.
- ?? A vocational rehabilitation or retraining program that includes an agreed list of providers of rehabilitation/retraining services that may be the exclusive source of providers of rehabilitation/retraining services.

What are the potential benefits of a carve-out?

The following benefits have been identified as potential results from a carve-out:

- ?? Reduction in injuries and claims as labor and management negotiate over effective safety programs.
- ?? Effective medical delivery as the quality of medical care may improve due to various factors, including an agreed selection of quality providers willing to provide care and effective case management to improve the continuity of care.
- ?? The right to negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to the employees who are eligible for health care coverage for non-occupational injuries and illnesses through their employer.
- ?? Alternative dispute resolution process responding to employees' needs without litigation.
- ?? Cost savings for unions, employers, and workers through fewer claims, fewer disputes, and discounts from insurers.
- ?? Satisfaction by unions, employers, and workers.

How would medical benefits work in a carve-out?

Injured workers may have improved access to high-quality medical care if labor and management mutually agreed upon lists of medical providers.

Effective April 19, 2004, parties to carve-out agreements have the right to negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to the employees who are eligible for health care coverage for non-occupational injuries and illnesses through their employer.

How would the medical-legal process work in a carve-out?

Many critical issues in workers' compensation are legal questions determined by medical findings. This is referred to as the medical-legal process and is distinct from medical treatment. Medical-legal evaluations may become necessary when any question of the employee's entitlement to benefits is not satisfactorily resolved by the reports of the treating physician

Improved communication with the treating physician may reduce the need for a separate medical-legal evaluation. The carve-out agreement may provide for a list of physicians to be used when a medical-legal exam is needed.

How would the dispute resolution process work in a carve-out?

A carve-out establishes an alternative dispute resolution process that is negotiated by labor and management. Employers and/or unions usually employ and compensate ombudsmen, mediators, and arbitrators in the dispute resolution process. In some cases, employers and/or union members act as ombudsmen and mediators.

Generally, the process starts with an ombudsman. Carve-out agreements typically provide that the ombudsman will be a neutral person available to all parties, who can provide information to injured workers and who attempts to avert or resolve disputes at an early stage. For example, the ombudsman may provide information on whether an injury is eligible for workers' compensation and on benefits and may resolve any problems with the delivery of medical benefits.

If resolution of a workers' compensation problem is unsuccessful at the level of the ombudsman, the injured worker may move the matter to the next step, which typically is formal mediation by an independent, neutral mediator. If mediation is unsuccessful, the parties may turn to an outside neutral arbitrator – often a retired worker's compensation administrative law judge. In addition, injured workers may at any stage hire an attorney to advise them in the dispute resolution process, although the attorney's role may be limited in construction industry carve-out agreements.

Legislative statute requires that an appeals process be maintained in a carve-out. Therefore, the arbitrator's decision may be appealed to the reconsideration unit of the Workers' Compensation Appeals Board and, ultimately, to the state courts of appeal.

How would worker retraining programs work in a carve-out?

Assembly Bill (AB) 227 repealed mandatory vocational rehabilitation benefit for injuries occurring on or after January 1, 2004, and put in place a supplemental job displacement benefit (SJDB) of up to \$10,000, depending on the degree of permanent partial disability. (See new Labor Code section 139.5.)

Although mandatory rehabilitation has been repealed, voluntary rehabilitation or retraining may still be negotiated under a carve-out.

Improved opportunities for returning to work with the employer in a carve-out may reduce the likelihood that an employee has to resort to the SJDB in an attempt to find other work.

How would the return-to-work process work in a carve-out?

If labor and management mutually agree upon a light-duty, modified job, or return-to-work program as part of the carve-out, injured workers may be able to return to work promptly and safely while recovering. This can aid recovery from injury and ensure continuity of employment and optimal productivity.

Preliminary findings from CHSWC study by RAND indicate that worker participation in a formal return-to-work program decreases a worker's wage loss in the year after injury.

Chapter V - How to Create a Carve-out in the Construction Industry

SUMMARY

- ?? Union and employer submit original application to Administrative Director (AD) of the Division of Worker's Compensation (DWC).
- ?? Employer submits a copy of the collective bargaining agreement with approximate number of employees covered under the agreement.
- ?? Employer submits evidence of a valid and active license where a license is required to do business.
- ?? Employer submits a statement that nothing invalidates the collective bargaining agreement.
- ?? Employer submits name, address, and phone number of contact person(s).
- ?? Employer submits evidence that the employer is engaged in construction or related industries.
- ?? Employer submits evidence of an insurance program large enough to meet statutory requirements.
- ?? Union submits LM-2 or LM-3.
- ?? Union submits name, address, and phone number of contact person(s).
- ?? Union submits evidence that it is a bona fide labor organization.
- ?? AD checks that the application is complete.

What are the steps in the process to create a carve-out? Administrative Director's Rules

Administrative Director's Rule spells out the steps as follows:

Section 10201 (California Code of Regulations, title 8) – Procedure for Determining Eligibility under Labor Code section 3201.5.

- ?? Every employer and union proposing to establish any program permitted by Labor Code section 3201.5 shall jointly request the Administrative Director to determine eligibility, as follows:
- (1) Employers shall submit the following documents:
- (A) Upon its original application and whenever it is renegotiated thereafter, a copy of the underlying collective bargaining agreement and the approximate number of

employees who will be covered thereby. The collective bargaining agreement shall be complete, including side letters and all appendices and other documents referred to in the agreement that relate to the program permitted by Labor Code section 3201.5, including but not limited to trust agreements and agreements concerning providers. If the application is on behalf of a group of employers, the application shall clearly define the group and shall state whether all the members of the group are bound by the 3201.5 provision, or whether each member must individually agree to be bound.

- (B) Upon its original application and annually thereafter, evidence of a valid and active license where that license is required by law as a condition of doing business in the state within the industries set forth in subdivision (a) of Section 3201.5.
- (C) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement.
- (D) Upon its original application and annually thereafter, the name, address, and telephone number of the contact person of the employer.
- (E) Upon its original application and annually thereafter, evidence that the employer is actually engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy- duty mechanics, surveying, or construction inspection in California, or has a plan for immediate engagement in one of those businesses.
- (F) Upon its original application and annually thereafter, evidence that the employer:
 - (i) is developing or projecting an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars (\$250,000) or more, or has paid an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars (\$250,000) in at least one of the previous three years; or
 - (ii) is a group of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, which develops or projects annual workers' compensation insurance premiums of two million dollars (\$2,000,000) or more; or
 - (iii) is an employer or group of employers that is self-insured in compliance with Section 3700 that has projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (i) in the case of employers, or paragraph (ii) in the case of groups of employers; or

(iv) is an employer, who is properly signatory to a project agreement, and is covered by an owner or general contractor provided wrap-up insurance policy applicable to a single construction site that develops workers' compensation insurance premiums of two million dollars (\$2,000,000) or more with respect to those employees covered by that wrap-up insurance policy.

Every member of a group of employers must maintain separately administered workers' compensation insurance of a self-insurance program distinct from all other types of insurance. Every member must maintain this insurance or self- insurance in one of the ways enumerated in Labor Code section 3700; but it is not necessary that all members maintain insurance or a self-insurance program in the same way. Every member must meet one of the minimum premium or cost requirements listed in paragraphs (i) through (iv) above.

- (G) Upon its original application and annually thereafter a statement that it is able and willing to supply the data required by Labor Code section 3201.5(i).
- (H) If the application is on behalf of a group of employers, evidence that:
 - (i) membership in the group is limited to employers that meet all the criteria of Labor Code section 3201.5 and these regulations;
 - (ii) the group shall, on behalf of its individual members, provide the data required by Labor Code section 3201.5(i);
 - (iii) the group shall maintain records of its membership satisfactory to the Administrative Director for the purpose of readily ascertaining the facts required by Section 10202(c). Membership records shall include evidence of security for the payment of compensation for each member, including the insurance policy number, or a copy of the certificate of self-insurance issued pursuant to Labor Code section 3700. Membership records shall also include the approximate number of employees for each individual member of the group who is bound by the collective bargaining agreement. Copies of membership records shall be delivered to the Administrative Director on request.
- (2) Unions shall submit the following documents:
- (A) Upon its original application and annually thereafter, a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.

- (B) Upon its original application and annually thereafter, the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.
- (C) Upon its original application and annually thereafter evidence that the union is a bona fide labor organization in that:
 - (i) it actually represents employees engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy- duty mechanics, surveying, or construction inspection in California as to wages, hours and working conditions,
 - (ii) its officers have been elected by secret ballot or otherwise in a manner consistent with federal law, and
 - (iii) it is free of domination or interference of any employer and has received no improper assistance or support from any employer.

It will be presumed that a union is bona fide if for a period of five years it has actually entered into collective bargaining agreements with employers in California and has filed all appropriate reports with the United States Department of Labor in that period. If a union is not presumed to be bona fide, it shall present evidence satisfactory to the Administrative Director that it meets the criteria of a bona fide labor organization.

(3) Any person may submit documents to the Administrative Director that bear on the eligibility of an applicant. Copies of all such documents received shall be sent to the applicants for comment.

?? Issuance of a Letter of Eligibility

Within 30 days after receiving an application, the Administrative Director shall notify the applicants that the application is complete or shall specify what further information is needed to complete the application. Within 30 days after the time an application is completed, the Administrative Director shall either (1) issue a letter of eligibility, or (2) deny eligibility. If eligibility is denied, the Administrative Director shall inform the parties of the reasons therefor. For good cause and upon written notice to the applicants, the Administrative Director may extend the periods of notification for an additional 30 days.

?? Period of Eligibility

The letter of eligibility shall state the beginning date of eligibility, which shall be no earlier than 15 days before the parties submitted their request to the Administrative Director under this section. A letter of eligibility shall remain valid for the same period as the 3201.5 provision of the collective bargaining agreement, but no longer then three

years from the date of issuance of the letter. Upon the effective date of this regulation, the Administrative Director shall re-issue letters of eligibility to parties which have already received them

THE LABOR-MANAGEMENT AGREEMENT

- ?? A labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.
- ?? The labor-management agreement has been negotiated in accordance with the authorization of the AD between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:
 - ?? An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the reconsideration unit of the Workers' Compensation Appeals Board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge.
 - ?? The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided.
 - ?? The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators.
 - ?? Joint labor-management safety committee.
 - ?? A return-to-work program offering a light-duty modified job or alternative job.
 - ?? A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation/retraining services that may be the exclusive source of providers of rehabilitation/retraining services.
- ?? The labor-management agreement must not diminish the entitlement of an employee to compensation payments fully paid by the employer for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment.

In addition, a carve-out agreement may provide for a separate fund to pay for the administration of the alternative dispute resolution program. It may also create a committee with equal employer and union representation to supervise the carve-out and to hire an administrator and an ombudsman staff.

Chapter VI - How to Create a Carve-out in All Industries Other Than Construction

SUMMARY

- ?? Union files a petition with the Administrative Director (AD) of the Division of Workers' Compensation (DWC) to enter into a carve-out.
- ?? AD checks that the petition is complete.
- ?? AD verifies petitioner's status as the exclusive bargaining agent.
- ?? AD issues a letter advising the union and the employer of eligibility to enter into negotiation for a period not to exceed one year for the purpose of reaching agreement on the carve-out.
- ?? Union and employer negotiate a carve-out agreement.
- ?? Union and employer submit application to the AD.
- ?? Employer submits a copy of the collective bargaining agreement with approximate number of employees covered under the agreement.
- ?? Employer submits a statement that nothing invalidates the collective bargaining agreement.
- ?? Employer submits name, address, and phone number of contact person(s).
- ?? Employer submits evidence of a valid and active license where a license is required to do business.
- ?? Employer submits evidence of an insurance program large enough to meet statutory requirements.
- ?? Union submits LM-2 or LM-3.
- ?? Union submits name, address, and phone number of contact person(s).
- ?? AD checks that the application is complete.

What are the steps in the process to create a carve-out? Administrative Director's Rules

The AD has issued regulations to carry out the new law for carve-outs outside the construction industry:

Section 10202 (California Code of Regulations, title 8) – Procedure for Recognizing Labor-Management Agreements under Labor Code section 3201.7.

?? Any union in an industry not covered by Labor Code section 3201.5 who seeks to negotiate a 3201.7 provision with an employer shall file a petition with the Administrative Director a

petition, verified under penalty of perjury, on the "Petition for Permission to Negotiate a Section 3201.7 Labor-Management Agreement" form (DWC Form RGS-1), contained in Section 10202.1. A proof of service by mail declaration shall be attached to the petition indicating that the complete petition, including all attachments, were served on the employer, or group of employers.

- ?? Within 10 days after receiving a petition, the Administrative Director shall notify the union that the petition is complete or shall specify what further information is needed to complete the petition. Within 30 days after the time the petition is completed, the Administrative Director shall either (1) issue to the union and employer, or group of employers, a letter of eligibility to negotiate a 3201.7 provision, or (2) deny the petition. If the petition is denied, the Administrative Director shall inform the union of the reasons therefor. For good cause and upon written notice to the union, the Administrative Director may extend the periods of notification for an additional 30 days.
- ?? The letter of eligibility to negotiate shall remain valid for a period not to exceed one year from the date of issuance. Upon joint request by the union and the employer, or group of employers, an additional one-year period to negotiate a 3201.7 agreement shall be granted.
- ?? Upon receipt of the letter of eligibility to negotiate, the union and employer, or group of employers, may negotiate a 3201.7 provision. A negotiated and signed 3201.7 provision between a union and employer, or group of employers, will be recognized by the Department of Industrial Relations as valid and binding upon application by the parties to the Administrative Director.
 - (1) The employer, or group of employers, shall submit the following documents with the application:
 - (A) Upon its original application and whenever it is renegotiated thereafter, a copy of 3201.7 provision, and the approximate number of employees who will be covered thereby. If the application is on behalf of a group of employers, the application shall clearly define the group and shall state whether all the members of the group are bound by the 3201.7 provision, or whether each member must individually agree to be bound.
 - (B) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement.
 - (C) Upon its original application and annually thereafter, the name, address, and telephone number of the contact person of the employer, or group of employers.
 - (D) Upon its original application and annually thereafter, evidence of a valid and active license where that license is required by law as a condition of doing business in the state.

- (E) Upon its original application and annually thereafter, evidence that the employer:
 - (i) is developing or projecting an annual workers' compensation insurance premium, in California, of fifty thousand dollars (\$50,000) or more, and employing at least fifty (50) employees, or has paid an annual workers' compensation insurance premium, in California, of fifty thousand dollars (\$50,000), and employing at least fifty (50) employees in at least one of the previous three years; or
 - (ii) is a group of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers' compensation insurance premiums of five hundred thousand dollars (\$500,000) or more; or
 - (iii) is an employer or group of employers, including cities and counties, that is self-insured in compliance with Section 3700 that has projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (i) in the case of employers, or paragraph (ii) in the case of groups of employers.
- (F) Upon its original application and annually thereafter a statement that it is able and willing to supply the data required by Labor Code section 3201.7(h).
- (G) If the application is on behalf of a group of employers, evidence that:
 - (i) membership in the group is limited to employers that meet all the criteria of Labor Code section 3201.7 and these regulations;
 - (ii) the group shall, on behalf of its individual members, provide the data required by Labor Code section 3201.7(h);
 - (iii) the group shall maintain records of its membership satisfactory to the Administrative Director for the purpose of readily ascertaining the facts required by subdivision (h) of the section. Membership records shall include evidence of security for the payment of compensation for each member, including the insurance policy number, or a copy of the certificate of self-insurance issued pursuant to Labor Code section 3700. Membership records shall also include the approximate number of employees for each individual member of the group who is bound by the collective bargaining agreement. Copies of membership records shall be delivered to the Administrative Director on request.
- (2) Unions shall submit the following documents with the application:

- (A) Upon its original application and annually thereafter, a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.
- (B) Upon its original application and annually thereafter, the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.
- ?? Every member of a group of employers must maintain separately administered workers' compensation insurance of a self-insurance program distinct from all other types of insurance. Every member must maintain this insurance or self-insurance in one of the ways enumerated in Labor Code section 3700; but it is not necessary that all members maintain insurance or a self-insurance program in the same way. Every member must meet one of the minimum premium or cost requirements listed in paragraphs (1)(E)(i) through (1)(E)(iii) above.
- ?? Any person may submit documents to the Administrative Director that bear on the application of the union and employer, or group of employers. Copies of all such documents received shall be sent to the union and employer, or group of employers, for comment.
- ?? Within 30 days after receiving the application, the Administrative Director shall notify the union and employer, or group of employers, that the application is complete or shall specify what further information is needed to complete the application. Within 30 days after the time the application is completed, the Administrative Director shall either (1) issue to the union and employer, or group of employers, a letter recognizing the 3201.7 provision, or (2) deny the application. If the application is denied, the Administrative Director shall inform the union and employer, or group of employers, of the reasons therefor. For good cause and upon written notice to the union and employer, or group of employers, the Administrative Director may extend the periods of notification for an additional 30 days.
- ?? The recognition of the Section 3201.7 provision is a determination by the Administrative Director that the parties meet the eligibility requirements of Labor Code section 3201.7. Recognition is not a determination by the Administrative Director that the 3201.7 agreement, or any part of it, is in compliance with Labor Code section 3201.7.
 - (1) A 3201.7 provision is valid and binding only if there was a complete application filed with the Administrative Director at the time of inquiry.
 - (2) A 3201.7 provision negotiated and signed by a group of employers shall be valid as to an individual member of the group if all the following facts are established as of the time the provision is alleged to be in effect and at the time of injury:
 - (A) The group of employers has a complete application filed with the Administrative Director;

- (B) The individual employer was a member of the group;
- (C) The individual employer had signed the 3201.7 provision;
- (E) The individual employer was is compliance with Labor Code section 3201.7(c).

Chapter VII - The Key Participants in a Carve-out: Roles and Responsibilities

Who are the key participants in a carve-out and what are their roles and responsibilities?

Unions, workers, employers, ombudsmen, mediators, and arbitrators are typically the key participants who play a critical role in a carve-out to ensure that everyone's best interests are served. In addition, the process may include attorneys and the reconsideration unit of the Workers' Compensation Appeals Board.

Unions

Key areas that unions may focus on include medical services and choice of physician; resolution of medical and legal disputes; preservation of wages and benefits; return to work (modified duty or alternative work); protection for job discrimination; disability (ADA) rights.

The role of unions may be to:

- ?? **Negotiate for additional benefits** a carve-out may be an avenue for unions to improve conditions on the job in general and to successfully negotiate additional benefits and protection for injured or ill members. For example, unions may be able to specify what kinds of medical services will be offered to injured workers and how the services will be provided. They may also be able to ensure that employees injured on the job get prompt emergency medical aid and that injured workers, not employers, are able to select the primary treating physician.
- ?? **Provide representation at interviews** -- unions may also be able to assist when dispute resolution is needed. They may, for example, offer to have a representative present when the injured worker is interviewed by the employers or insurer.
- ?? **Provide information** -- unions may provide information to workers and build support both for creating a carve-out process and for policies and procedures once the carve-out is established.
- ?? Get input from members and employers -- unions may get input from members about injury and illness prevention and about the experiences of injured or ill workers with workers' compensation issues through written surveys or meetings organized by the union to discuss health and safety and workers' compensation. A survey is an opportunity to talk with members, educate them, and get their opinions.

Unions may also get input from the employer about injury and illness prevention and workers' compensation claims. Employers are required to keep specific documentation

of workers' compensation claims, including copies of claim forms (with personal identifying data removed if necessary) and information on lost time and on the causes of injuries and illnesses.

?? Develop a joint labor-management contract -- unions will want to have specific contract language that spells out how they will participate in the carve-out program. Minutes of the joint labor-management committee should be kept, as well as minutes of the union's health and safety committee.

The labor-management contract should describe how the employer and the union will work together to create and conduct the carve-out program. The contract should specify: (1) how the employer will recognize union representatives; (2) whether there will be a joint labor-management committee; (3) how joint workers' compensation activities will be funded; (4) which information the employer must provide to the union; (5) which mechanism will be used for ongoing negotiations between the parties to address new issues that arise.

The union contract may specify how employees are to be informed about how to deal with work injuries or illnesses and how to best manage their workers' compensation claims.

Workers

Workers have a critical responsibility to participate in preventing injuries. This may include reporting claims immediately and using appropriate resources to resolve problems.

The role of workers is to:

- ?? Learn about and participate in the employer's safety program.
- ?? **Report claims** as soon as possible by contacting the ombudsman.
- ?? Participate in an alternative dispute resolution process -- to resolve workers' compensation disputes in the following ways: (1) seek the professional assistance and guidance of an expert, the ombudsman, to get free, confidential advice and assistance regarding claims; (2) work with a specially trained claims unit dedicated solely to expediting workers' compensation claims; (e) work with experts to resolve workers' compensation treatment and compensation disputes, should they arise; (4) retain an attorney, if necessary.

Employers

Employers work with unions to ensure that all steps in the carve-out process work smoothly and appropriate benefits are provided to injured workers.

The role of employers is to:

- ?? **Qualify to establish a carve-out --** by maintaining the proper workers' compensation coverage.
- ?? Work with labor to develop and implement a safety program to reduce job accidents and their associated costs.
- ?? **Develop a joint labor-management contract** -- unions will want to have specific contract language that spells out how they will participate in the carve-out program. Minutes of the joint labor-management committee should be kept, as well as minutes of the union's health and safety committee.

The labor-management contract should describe how the employer and the union will work together to create and conduct the carve-out program. The contract should specify: (1) how the employer will recognize union representatives; (2) whether there will be a joint labor-management committee; (3) how joint workers' compensation activities will be funded; (4) which information the employer must provide to the union; (5) which mechanism will be used for ongoing negotiations between the parties to address new issues that arise

Ombudsmen

Ombudsmen may be the key to the success of the carve-out program. The ombudsman should be knowledgeable in workers' compensation law and the rights and responsibilities of the worker.

The ombudsman is an expert who may be hired to help employees resolve workers' compensation treatment and compensation issues. Services provided by the ombudsman are completely confidential; no information is repeated to the employer. In addition, no statement by the ombudsman is admissible at arbitration, should a dispute reach that stage.

The ombudsman is not a legal representative. The role of the ombudsman is to try to resolve problems in a satisfactory manner at the earliest possible time by aiding and counseling employees regarding claims, complaints, and inquiries. The ombudsman may act as a liaison between you, the insurance company, and medical providers.

The role of the ombudsman is to:

?? Act as a neutral party -- the ombudsman is a designated neutral party that has the responsibility of maintaining strict confidentiality concerning matters brought to his/her attention. The only exceptions, at the sole discretion of the ombudsman, are incidents where there appears to be imminent threat of serious harm.

- ?? **Maintain confidentiality** -- the ombudsman must take all reasonable steps to keep confidential any records and files pertaining to confidential discussions.
- ?? **Strive for objectivity and impartiality** the ombudsman maintains a responsibility to consider the concerns of all parties known to be involved in a dispute.
- ?? **Develop a range of options** the ombudsman presents responsible options to resolve problems and facilitate discussion to identify the best options.

Note: it is important that the ombudsman receive ongoing training.

Mediators

The primary purpose of a mediator is to facilitate the parties' voluntary agreement.

The role of a mediator is to:

- ?? Facilitate self-determination -- this is the fundamental principle of mediation; it requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.
- ?? **Ensure mediator impartiality** this is central to the mediation process. A mediator shall mediate only those matters in which she or he may remain impartial. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.
- ?? Maintain confidentiality this is also critical to the role of the mediator. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy. The mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers.

Arbitrators

Virtually all collective bargaining agreements include provision of arbitrating grievances. Decision-makers in arbitration settings are called arbitrators. Arbitrators act as a third-party neutral to decide or adjudicate the dispute between the parties in an informal proceeding that is not bound by traditional rules of evidence or procedure.

In the arbitration process, both sides have an opportunity to present witnesses and evidence and to engage in cross-examination. As a result, the arbitrator's decision, called an arbitration award, generally may be rendered quickly on the basis of the arbitrator's sense of fairness under the

circumstances, rather than on traditional legal norms, and is generally final and not appealable on substantive ground.

The competence, neutrality, and independence of the arbitrator are of paramount concern to a fair process and to the parties' perception of a fair process.

The role of the arbitrator is to:

- ?? **Be knowledgeable** in the workers' compensation dispute process.
- ?? **Appoint an authorized health care professional** to assist in the resolution of any medical issue.
- ?? **Render a decision (award)** within a specified number of days from the completion of the proceedings.
- ?? **Determine the fee for an attorney** representing an injured worker, taking into account the prevailing wage of attorneys practicing in workers' compensation for the geographical area in which the dispute has arisen.

Attorneys

Attorneys may provide support to an injured worker by giving information and advice; working with the ombudsman to facilitate discussion; and preserving workers' rights.

In all other industries than construction where an attorney's role may be limited, an injured worker may seek to be represented by an attorney if the worker is dissatisfied with the results of initial, informal stages of dispute resolution, if a medical evaluation is required to resolve a dispute, or if the worker is experiencing other problems with the claim. In the construction industry, the workers' right to be represented may be limited, depending on the terms of the carve-out agreement. In all other industries, the worker has a right to obtain representation at any stage.

The Reconsideration Unit of the Workers' Compensation Appeals Board

If either party is not satisfied with a decision rendered through arbitration, then the worker or employer may appeal to the reconsideration unit of the Workers' Compensation Appeals Board to review the decision in the same manner as it would review a decision of a state worker's compensation judge.

Chapter VIII - Alternative Dispute Resolution in a Carve-Out

The alternative dispute resolution process is described in the Sample Agreements and summaries of agreements that follow.

The key components in this process as exemplified in the Sample Agreements include the.²

- ?? Ombudsman
- ?? Mediator
- ?? Arbitrator

A decision of the arbitrator may be appealed to the reconsideration unit of the Workers' Compensation Appeals Board.

² Attorney participation at the employee's option is allowed under carve-out agreements and may be restricted in the construction industry.

Components of Construction Industry Carve-Outs

SAMPLE A

Employer Participation

Employer contribution	\$0.07 per hour for each hour paid for and/or worked; contribution must be no more than 4 weeks delinquent.
Trust Fund	Administers the program; sets rules and policies.
Insurance coverage	Complies with Labor Code section 3201.5.
Joint Labor-Management Safety Committee	Not specified.
Length of agreement	Not less than one year from the date of execution and to continue year to year unless terminated by either party by written notice 30 days prior to the anniversary date.

Alternative Dispute Prevention and Resolution System (ADR)

Steps of ADR	Ombudsman through Arbitration.
Timeframes of ADR	Ombudsman to be notified within 20 days and to respond as soon as possible; Informal Conciliation (also known as mediation) to be requested within 10 days after Ombudsman's final response; arbitration request filed with ADR Director within 20 days; arbitration decision within 30 days.
ADR Director	Has authority to schedule, enforce the scheduling of, and hold Informal Conciliation and arbitration.

Ombudsman	Selected by Trustees; paid by Trust Fund. Prevents or limits disputes at the earliest possible time; assists any employee who disputes the employer's action or inaction; acts as a liaison between the employee and the employer's insurance carrier; if requested, may help the employee file ADR forms or other documents; provides final response; attends and, if requested, assists the employee at Informal Conciliation.
Mediator	Appointed by Trust Fund; meets with employer and representative of the insurer; resolves dispute in mediation state.
Arbitrator	Selected by the parties using a method adopted by the Trust; cannot add to, subtract from, change, or modify any provision of the Addendum/Collective Bargaining Agreement; renders a decision within 30 days.
Fee schedules	Fees to be determined by employer, union, and authorized providers.
Qualified Medical Evaluator	On the Exclusive List of Medical Evaluators; will provide comprehensive medical-legal evaluation.
Attorney participation	Allowed following Informal Conciliation.
Attorney fees	Not specified.
Appeal to the reconsideration unit of the Workers' Compensation Appeals Board	Following arbitration; the Trust is not responsible for any costs incurred by either party.

Benefits: Medical, Medical-Legal, Vocational Rehabilitation, Return to Work

List of medical providers	Physicians; established by Trust and may be changed at any time by the Trust; needs to have sufficient providers to respond to medical treatment needs of employees.
Pre-designated physician	Not specified.
Emergency care provision	Any provider allowed, with change to provider from the authorized medical provider list.

Access to additional specialists not covered by medical provider list	Allowed; employer and employee try to agree; if no agreement, then employer selects additional specialist.
Qualified Medical Evaluators	Exclusive list of medical evaluators established by Trust; only one evaluator allowed except in the case of a specialty evaluation.
Agreed Medical Evaluators	Consulted regarding any issues in dispute.
Second opinion	Not specified.
Vocational Rehabilitation and Retraining Providers	Exclusive list of providers established by Trust; Trust adopts reasonable rules of practice and procedure regarding selection of providers.
Return to work	Not specified.

Safety

Joint Labor-Management Safety Committee Not specified.
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Components of Construction Industry Carve-Outs

SAMPLE B

Employer Participation

Employer contribution	\$0.015 per hour for each hour paid for and/or worked.
Compensation Trust	Establishes a Trust Fund; administers the alternative dispute prevention and resolution system; sets policies and rules.
Insurance coverage	Complies with Labor Code section 3201.5.
Joint Labor-Management Safety Committee	Not specified.
Length of agreement	The term of the collective bargaining agreement unless terminated by 180 days written notice by the union or 90 days written notice by the employer.

Alternative Dispute Resolution (ADR)

Steps of ADR	Ombudsman ("Program Representative") through arbitration.
Timeframes of ADR	Program Representative to resolve issue within 5 working days; mediation to be requested within 60 days and to be determined within 15 working days; arbitration request to be filed within 60 days; award within 10 working days.
ADR Director	Not specified.

Ombudsman ("Program Representative")	Paid by Trust Fund and selected by Trustees from a list of 5 candidates submitted by the union and may be discharged/removed at will by vote of the Trustees. Advises each injured worker about the program and its operation; responds when injured workers or the employer requests assistance; advises the injured worker within 5 working days of the position of the insurer or self-insured employer; assists injured worker with filing requests for mediation and arbitration and with mediation and arbitration proceedings; maintains a log of all activity.
Mediator	Appointed by Trust Fund; meets with employer and representative of the insurer; resolves dispute in mediation stage.
Arbitrator	Appointed by Trust Fund; has the same authority as a worker's compensation judge; findings or award have same force and effect as those of a California workers' compensation referee.
Fee schedules	Fees to be determined by employer, union, and authorized providers.
Qualified Medical Evaluator	Chosen from authorized provider list, if requested; exclusive provider of comprehensive medical-legal evaluation from treating physician.
Attorney participation	Allowed following mediation.
Attorney fees	Trust Fund is not liable for fees.
Appeal to the reconsideration unit Workers' Compensation	Allowed following arbitration.

Benefits: Medical, Medical-Legal, Vocational Rehabilitation, Return to Work

Authorized medical provider list	Physicians, facilities, prescription medicines.
Pre-designated physician	Allowed if designated in writing in advance.

Emergency care provision	Any provider allowed, with change to provider from the authorized medical provider list as soon as possible, consistent with sound medical practice.
Access to additional specialists not covered by medical provider list	Allowed.
Qualified Medical Evaluators	Not specified.
Agreed Medical Evaluators	Not specified.
Second opinion	Allowed; performed by authorized medical provider of Qualified Medical Evaluator (QME); only one second opinion allowed.
List of rehabilitation representatives and independent vocational evaluators	Includes retraining for fields related to ironwork.
Return to work	Not specified.

Safety

Joint Labor-Management Safety Committee Not specified.	
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Components of Construction Industry Carve-outs SAMPLE C

Employer Participation

Employer contribution	Not specified.
Trust Fund	Not specified.
Insurance coverage	Complies with Labor Code section 201.5.
Joint Labor-Management Safety Committee (JMLSC)	Sets policies and rules.
Length of agreement	Not less than one year from the date of execution and to continue year to year unless terminated by either party by written notice no less than 30 days prior to the anniversary date.

Alternative Dispute Resolution (ADR)

Steps of ADR	Ombudsman through arbitration.
Timeframes of ADR	Ombudsman to resolve issue within 10 days; mediation request to be filed within 60 days;
	Arbitration request to be filed within 30 days with hearing within 60 days of acceptance of assignment; arbitration to be completed within 30 days after referral to arbitrator; decision within 20 working days; parties to respond to Arbitration Award within 5 working days.
ADR Director	Not specified.
Ombudsman	Selected by and paid for by the Trust. For evidentiary and discovery purposes, the Ombudsman is considered a mediator; handles initial stage of all disputes; may assist in the filing of a request for mediation and/or arbitration; maintains a log of activity; employer may file disputes with the Ombudsman.

Mediator	Selected from list mutually agreed to by the parties of the agreement; has experience and is knowledgeable in the workers' compensation industry.
Arbitrator	Selected from list by the Joint Labor- Management Safety Committee. Has had experience and is knowledgeable in the workers' compensation dispute process; has at one time been a California workers' compensation judge.
Fee schedules	Limit fees charged for arbitration per Administrative Director (AD) or the Division of Workers' Compensation (DWC).
Qualified Medical Evaluator	If requested, chosen from authorized provider panel of three physicians selected by the Joint Labor-Management Safety Committee.
Attorney participation	Allowed following mediation.
Attorney fees	To be paid by prevailing party; not to exceed 12% of permanent disability (PD) award.
Appeal to the reconsideration unit of the Workers' Compensation	Following arbitration.

Benefits: Medical, Medical-Legal, Vocational Rehabilitation, Return to Work

Authorized medical provider list	Physicians, facilities, prescription medicines; one change of authorized medical provider allowed.
Pre-designated physician	Allowed if designated in writing in advance.
Emergency care provision	Any provider allowed, with change to provider from the authorized medical provider list.
Access to additional specialists not covered by medical provider list	Additional specialist should be an authorized provider and one change is allowed; if the employee does not select an authorized provider, the employee will be responsible for any expense incurred.
Qualified Medical Evaluators	Not specified.
Agreed Medical Evaluators	Not specified.

Second opinion	Allowed; only one second opinion.
Authorized vocational rehabilitation provider list	List may be changed by Joint Labor- Management Safety Committee or by mutual agreement of the parties to this agreement.
Return to work	Not specified.

Safety

Joint Labor-Management Safety Committee	Not specified.
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Components of Construction Industry Carve-outs SAMPLE D

Employer Participation

Employer contribution	1% of employers' annual workers' compensation premium; initial funding to be capped at \$500,000.
Joint Board of Trustees of the Trust	Employs an administrator and an Ombudsman; ensures adequate funding for administering the agreement and the alternative dispute resolution system.
Insurance coverage	Complies with Labor Code section 3201.5.
Length of agreement	Three years from the date of execution and to continue year to year unless terminated by either party by written notice 90 days prior to the anniversary date.

Alternative Dispute Resolution (ADR)

Steps of ADR	Ombudsman through Arbitration.
Timeframes of ADR	Ombudsman to respond to issue within 10 days; application for mediation within 60 calendar days; mediation to determine result within 10 working days; arbitration request to be filed within 30 days with hearing within 30 days; Arbitration Award within 10 working days.
Administrator	Employed by the Joint Board of Trustees of the Trust.
Ombudsman	Selected by Joint Board of Trustees for the Trust. Receives complaints from employees and assists employees in attempting to resolve any disputes with the workers' compensation insurer; assists in filing requests for mediation and arbitration; maintains log of all activity.

Mediator	Mediator assigned by the Joint Board of Trustees or its designee from a list determined by the Joint Board, which may amend the list at any time; has experience with the California workers' compensation system; may appoint an authorized health care professional to assist in the resolution of any medical issue.
Arbitrator	Has had experience and is knowledgeable in the California workers' compensation dispute process and has been at one time a certified specialist in workers' compensation law of a California workers' compensation administrative law judge; assigned by the Joint Board or its designee from a list of arbitrators determined by the Joint Board, which may amend the list at any time.
Fee schedules	Established by Joint Board; cover medical treatments, vocational rehabilitation, mediation, arbitration, attorneys' fees, and documents and narratives.
Qualified Medical Evaluator	Not specified.
Attorney participation	Allowed following mediation.
Attorney fees	Not to exceed 12% of the permanent disability (PD) award; paid by employer when the employee prevails.
Appeal to the reconsideration unit of the Workers' Compensation Appeals Board	Following arbitration.

Benefits: Medical, Medical-Legal, Vocational Rehabilitation, Return to Work

Authorized Provider List	Lists for medical, hospital, prescription medicines (in most cases, generic forms of prescription medicines shall be provided); selected by The Joint Board of Trustees for the Trust which may amend it at any time.
Pre-designated physician	N/A
Emergency care provision	Any provider allowed, with change to provider from the authorized medical provider list.

Access to additional specialists not covered by medical provider list	Allowed, but change to authorized provider required.
Qualified Medical Evaluators	Not specified.
Agreed Medical Evaluators	Not specified.
Second opinion	One second opinion allowed.
Authorized Vocation Rehabilitation Provider List	Developed by the parties of the agreement; The Joint Board of Trustees of the Trust may, with the agreement and acceptance of the participating insurance carrier(s), change, alter, or amend the list at any time.
Return to Work	Not specified.

Safety

Joint Labor-Management Safety Committee	Responsible for developing and administering a comprehensive Safety Program designed to foster improvements in occupational safety and health and other working conditions in the roofing industry. The Association's Directory of Safety and Compliance Services takes direction from the Committee and reports on loss control activities at both Committee and Trust meetings.
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Components of Construction Industry Carve-outs

SAMPLE E

Employer Participation

Employer contribution	Not specified.
Trust Fund	Not specified.
Insurance coverage	Complies with Labor Code section 3201.5.
Joint Labor-Management Safety and Oversight Committee (LMSOC)	Sets rules and policies.
Length of service	Not less than one year from the date of execution and to continue year to year unless terminated by either party by written notice 90 days prior to June 30.

Alternative Dispute Resolution (ADR)

Steps of ADR	Ombudsman through arbitration.
Timeframes of ADR	Ombudsman to resolve issue within 10 days; application for mediation within 60 days; assignment of mediation within 3 days; mediation completed within 14 days of assignment; arbitration request to be filed within 30 days with hearing within 30 days of acceptance of assignment; arbitration award within 10 days.
ADR Director	Not specified.
Ombudsman	Selected, and may be changed at any time, by the LMSOC; maintains a log of all activity, including the date of each notification and the date of each response; receives complaints and requests for information from employees who have filed claims; if requested, resolves disputes with the employer's workers' compensation insurer; if requested, assists the employee with filing a Request for Mediation and Arbitration; expenses paid for by the insurance carrier(s)' out-of-gross premiums.

Mediator	Contacts the parties to the dispute, including the insurance carrier, and takes whatever steps are reasonable to bring the dispute to an agreed conclusion; may appoint an authorized health care professional to assist in the resolution of any medical issue, the cost to be paid by the insurance carrier; expenses paid for by the insurance carrier(s)' out-of-gross premiums.
Arbitrator	Has experience and is knowledgeable in the workers' compensation dispute resolution process and has been, at one time, a California workers' compensation judge; assigned by the LMSOC or its designee; may, if necessary, appoint an authorized health care professional to assist in the resolution of any medical issue; hears all issues of fact and law; issues findings, decisions and awards as may be necessary for full adjudication of the case; fees/expenses paid for by the insurance carrier(s) out-of-gross premiums.
Fee schedules	Official Medical Fee (OMFS) for medical treatment; fee schedule for medical-legal expense; vocational rehabilitation costs and changes not to exceed Labor Code section 139.5.
Qualified Medical Evaluator	Chosen from authorized provider list, if requested.
Attorney participation	Allowed following mediation.
Attorney fees	Determined by the arbitrator or not greater than 12% of the permanent disability (PD) award, whichever is the lesser.
Appeal to the reconsideration unit of the Workers' Compensation Appeals Board	Following arbitration.

Benefits: Medical, Medical-Legal, Vocational Rehabilitation, Return to Work

Authorized medical provider list	Physicians, facilities, prescription medicines; one-time change of physician allowed.
Pre-designated physician	Allowed if designated in writing in advance.

Emergency care provision	Any provider allowed, with change to provider from the authorized medical provider list.
Second opinion	Allowed; only one second opinion.
Access to additional specialists not on provider list	Allowed; one-time change only.
Vocational rehabilitation provider list	Not specified.

Safety

Joint Labor-Management Safety Committee	Not specified.
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Components of Construction Industry Carve-outs SAMPLE F

Employer Participation

Employer contribution	Not specified.
Trust Fund	Not specified.
Insurance coverage	Complies with Labor Code section 3201.5.
Joint Labor-Management Workers' Compensation Committee	Meets once a quarter; jointly chaired by a representative or designee of the employer and of the union; determines benefits and procedures for workers' compensation and the alternative dispute resolution process.
Length of agreement	Not specified.

Alternative Dispute Resolution (ADR)

Steps of ADR	Ombudsperson through arbitration.
Timeframes of ADR	Employee to contact Ombudsperson within 30 days of not believing that benefits are being provided; Ombudsperson to resolve issue within 15 business days; application for mediation within 25 business days; mediation to determine result within 15 business days; arbitration request to be filed within 30 business days with hearing within 45 business days and award within 10 business days following completion of hearing.
ADR Director	Not specified.
Ombudsperson	Appointed and compensated by owner, after reviewing the qualifications of the candidate(s) with the Joint Workers' Compensation Committee. Explains to the employee the response to any employee/question complaint; resolves issues or receives application for mediation; maintains a record of all activity.

Mediator	Familiar with and experienced in the California state workers' compensation system; selected by the Joint Workers' Compensation Committee.
Arbitrator	Has experience as referee and/or judge under the state workers' compensation system and, at a minimum, qualified as an arbitrator under the Code; compensated by the insurance carrier; may allow deposition by a treating physician; has the same authority as workers' compensation judge; the findings of fact, award, order or decision shall have the same force and effect as that of a workers' compensation judge.
Fee schedules	Not specified.
Qualified Medical Evaluator/Authorized Health Care Professional	Not specified.
Attorney participation	Allowed at any time, but will only be considered counsel of record following a request for arbitration.
Attorney fees	To be paid by person retaining the attorney.
Appeal to the reconsideration unit of the Workers' Compensation Appeals Board	Following arbitration.

Benefits: Medical, Medical-Legal, Vocational Rehabilitation, Return to Work

Authorized medical provider list	Physicians, facilities, prescription medicines; one-time change of provider allowed.
Pre-designated physician	Not specified.
Emergency care provision	Any provider allowed, with change to provider from the preferred provider network.
Access to additional specialists	Allowed if selected by authorized provider.
Qualified Medical Evaluators	Not specified.
Agreed Medical Evaluators	Not specified.
Second opinion	Allowed; only one second opinion.

Authorized rehabilitation service provider list	Establishes vocational rehabilitation evaluator/service organizations.
Safety	
Safety Committee	Meets monthly, or more often, to receive and review reports on safety programs to ensure the highest level of occupational safety.

Chapter IX: Sample Carve-out Agreements

Carve-out agreements and tools may differ because of differences in industry, structure and mode of operation of the union and the nature of the labor-management partnership.

The following sample agreements from the construction industry are only for illustration purposes. Some of the key elements include:

- ?? The funding source for the agreements
- ?? Use of qualified medical evaluations
- ?? Vocational rehabilitation and retraining providers
- ?? Alternative dispute resolution process

These agreements provide two examples of how a carve-out may be structured. Their inclusion in this Guide does not imply approval of these agreements for any particular employer and union.

WORKERS' COMPENSATION ADDENDUM

to

THE CURRENT COLLECTIVE BARGAINING AGREEMENT

between

THE UNION

and

THE SIGNATORY EMPLOYER

December, 1995 (reprinted August 2001)

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This Workers' Compensation Addendum ("Addendum") is entered into by and between
("Employer") and the ("Union").
This Addendum is intended as an addendum to the current Collective Bargaining Agreement
("CBA") between the Employer and the Union.

ARTICLE I: PURPOSE

The purposes of this Addendum are the following: (1) to provide employees claiming compensable injuries under Division 4 of the California Labor Code ("Workers' Compensation Law") with improved access to high-quality medical treatment and prompt compensation, (2) to reduce the number and severity of disputes between employees and employers regarding workers' compensation, (3) to provide a better method to resolve such disputes when they occur, (4) to provide workers' compensation coverage in a way that improves labor management relationships, job security and organizational effectiveness, and (5) to provide the foregoing on a stable and long-term basis.

These purposes will be achieved by utilizing provisions of California Labor Code § 3201.5 and other relevant laws to establish the following: a labor-management trust, an employer safety group for insurance, an exclusive list of medical providers, an alternative dispute prevention and resolution system, and exclusive lists of medical evaluators and vocational rehabilitation and retraining programs.

The Employer and Union recognize the interdependent nature of each purpose and each means to achieve those purposes.

ARTICLE II: PLEDGE OF ACCORD

The Union and Employer enter into this Addendum with the understanding that the law authorizing this Addendum is radically new, untested and evolving, and that problems may therefore arise in applying and administering this Addendum. Nevertheless, it is understood that long-term benefits can be attained by Employees, the Union and Employers by everyone's good faith performance of this Addendum. Therefore, it is agreed that every good faith effort shall be made to apply and administer this Addendum in accordance with the true intent of its purposes, rights and obligations.

ARTICLE III: SCOPE OF THE ADDENDUM

- A. It is recognized that California law restricts which employers can become covered and remain covered by this Addendum. The terms of this Addendum will apply to the Employees, Union and Employer, if:
 1. The Employer satisfies all requirements of California Labor Code §3201.5 to be eligible for coverage by this Addendum;
 2. The Employer secures and maintains workers' compensation coverage with the insurance carrier affiliated with the ______ Trust and complies with the requirements of California Labor Code §3201.5 regarding insurance coverage; and
 3. The Employer is not delinquent in making Trust contributions required by this Addendum for more than any four months.
- B. The Employer's failure to satisfy any of the conditions in Paragraph A will terminate this Addendum, but not the CBA. Such termination will not prohibit the Employer from again becoming signatory to this Addendum.

- C. This Addendum applies only to injuries, as defined by Workers' Compensation Law, sustained by Employees when covered by this Addendum. Injuries occurring after termination of this Addendum, for any reason, are not covered by this Addendum.
- D. This Addendum is not intended to diminish any type of compensation that Employees are entitled under Workers' Compensation Law, to the full extent that compensation has been defined by Workers' Compensation Law.
- E. This Addendum is binding upon the heirs, executors, administrators, purchasers and assigns of the Employer, subject to the provisions of this Addendum, and is binding upon the Employer regardless of a change of entity, name, or association.
- F. The Employer may delegate to its workers' compensation insurance carrier the performance of its obligations under this Addendum, but it cannot relieve itself of the legal responsibility for those obligations.
- G. On projects where the owner, developer or general contractor supplies project wrap-up insurance that includes workers' compensation coverage, the Employer may suspend this Addendum for work on that specific project.
- H. This Addendum must remain in effect for the term of the CBA presently in effect, except as provided by this Addendum. At any time, the Union may terminate this Addendum by giving the Employer and the Trust one hundred and eighty (180) days written notice, and the Employer may terminate this Addendum by giving the Union and the Trust ninety (90) days written notice.
- I. Should the Employer, for any reason, cease to be covered by this Addendum, it shall take all steps necessary to ensure that its obligations under California Workers' Compensation Law are met with respect to all Employees previously covered by this Addendum.

ARTICLE IV: WORKERS' COMPENSATION TRUST

- A. This Addendum hereby provides for the establishment, maintenance and administration of a joint labor-management trust known as the ______Trust ("Trust"). The general purpose of the Trust is to hold funds in trust, which will be used to achieve the purposes of this Addendum. This includes establishing a Trust Fund, administering the Alternative Dispute Prevention And Resolution System, retaining and directing an Ombudsman, and ensuring that the ______ Group of Employers for Workers' Compensation Insurance is established in compliance with California Insurance Code §§ 11656.6 and 11656.7 and California Labor Code § 3201.5. The structure, purposes, duties and powers of the Trust shall be specifically set forth in the Trust Agreement for the ______Trust ("Trust Agreement").
- B. The Employer hereby adopts and agrees to be bound by the terms of the Trust Agreement, and further agrees to observe and be bound by the actions and determinations of the Board of Trustees ("Trustees") of the Trust.
- C. The Employer shall contribute to the Trust the sum of seven cents (\$0.07) per hour for each hour worked, or paid for, by Employees performing work covered by this Addendum, not to exceed 35 hours per week per Employee, for the purposes of defraying costs and administering the Trust.
 - 1. If the Employer is signatory to a CBA that uses "benefit units" to calculate contributions for union dues or to trust funds, the amount of contributions to the Trust must be calculated by converting the "benefit units" to "hours" on a one-to-one basis. This conversion is not intended for any purpose other than the efficient calculation of contributions to the Fund.
 - 2. The Trust shall devise a rate of contribution designed for Employers under a CBA using a "percentage" basis to calculate contributions for union dues or trust funds that is

equitably equivalent in amount to the hourly basis. In the meantime, such Employers shall use the hourly rate for contributions.

- 3. The Trustees may, from time to time, waive a portion of the contribution provided in this Addendum, subject to the Trust Agreement.
- D. In case the auditors for the Trustees conduct an audit and determine that the Employer has violated the provisions of this Article for hours worked (or paid for), in its method of computation of contributions, or if adequate records are not made available to allow the auditor to make a determination in that regard, or if hours worked for each payroll period are not recorded on payroll records, the following formulas will apply: For the first violation, the following formula will apply only to the Employees involved. For subsequent violations, the following formula will apply to the entire ______ payroll.
- E. The gross compensation of the Employee paid or payable by reason of his work must be divided by the base rate, i.e., the lowest hourly contract wage rate, including any differentials, for any classification in which the Employee worked during the report periods involved in the audit, and the quotient from that calculation must be multiplied by the applicable rate of workers' compensation contributions. The resulting sum is owing to and must be paid to the Trust. For purposes of this provision, the said quotient will be deemed to be the number of hours worked by the Employee during the report periods involved in the audit.
- F. Every Employer who is audited and whom the Trustees conclude that contributions to the Trust have not been computed or made by it in the manner required by Paragraphs D and E will be liable for the expense of the audit in addition to any other liability set forth under this Article or the Trust Agreement.
- G. If the Employer is delinquent in making contributions or fails to comply with an audit request within ten days after written notice is sent, via Registered Mail or Certified Mail -- Return Receipt Requested by the Trust, the Union may withhold service from the Employer until such payments are made or compliance with the audit request has occurred.

ARTICLE V: EMPLOYERS' SAFETY GROUP

- A. The Employer shall join the Group of Employers for ("Safety Group"), established pursuant to California Insurance Code §§ 11656.6 and 11656.7 and California Labor Code § 3201.5, secure its workers' compensation coverage from the insurance carrier affiliated with the Safety Group to abide by the By Laws of the Safety Group.
- B. The Employer may choose to be exempt from this Article if it develops or projects an annual workers' compensation insurance premium in California of \$250,000 or more, or paid an annual workers' compensation insurance premium in California of \$250,000 in at least one of the previous three years, and if it also satisfies all other requirements for eligibility.

ARTICLE VI: MEDICAL PROVIDERS

- A. All medical treatment required to be provided by the Employer under Workers' Compensation Law shall be selected by the Employee from the Exclusive List of Medical Providers.
- B. The Trust shall agree to the Exclusive List of Medical Providers under the provisions of the Trust Agreement and promulgate it appropriately. The Exclusive List may be changed at any time by the Trust.
- C. The Exclusive List of Medical Providers must include the following specialties: Cardiology, Chiropractic, Dermatology, Ears, Nose, Throat, General Practice, General Surgery, Internal Medicine,

Orthopedics, Neurology, Neurosurgery, Occupational Medicine, Oncology, Opthamology, Osteopathic Medicine, Prescription Medicine, Psychiatry, Psychology, Pulmonary/Respiratory, Radiology and Rheumatology. In any event, the Exclusive List must contain sufficient providers to respond to the medical treatment needs of Employees.

- D. With the intent of making the Exclusive List of Medical Providers function fairly, efficiently and economically, and in recognition that the Exclusive List necessarily limits Employees:
 - 1. In case of emergency when no authorized provider is available, the Employee may seek medical treatment from another health care professional during the emergency that is reasonable and necessary. The Employee shall transfer the treatment to an authorized provider as soon as reasonably possible, consistent with sound medical practices.
 - 2. If an authorized provider determines that consultation or treatment is necessary from a specialist that is not included on the Exclusive List, the Employer and Employee shall first use all best efforts to agree to such specialist, and failing an agreement, the Employer shall select an appropriate specialist who offers treatment at a practical distance for the Employee.
 - 3. If distance makes it unreasonable for the Employee to receive treatment from an authorized provider, the Employer and Employee shall first use all best efforts to agree to a provider, and failing an agreement, the Employer shall select an appropriate provider who offers treatment at a reasonable distance for the Employee.
 - 4. The Trust has the authority to adopt reasonable rules of practice and procedure regarding use of the Exclusive List of Medical Providers, as long as such rules do not conflict with provisions of this Addendum.
- E. The Employer is not liable for the cost of medical treatment furnished by anyone not authorized by this Addendum.

ARTICLE VII: ALTERNATIVE DISPUTE PREVENTION & RESOLUTION SYSTEM

A. GENERAL

- 1. The Alternative Dispute Prevention And Resolution System ("ADR") replaces all dispute resolution processes provided by Workers' Compensation Law, to the fullest extent permitted, except as provided by this Addendum.
 - a. All dispute resolution processes contained in the provisions of Workers' Compensation Law listed in Appendix 1 to this Addendum are not replaced by the ADR. Such dispute resolution processes are intended to work in conjunction with those provided by this Addendum.
- 2. Of the provisions of Workers' Compensation Law listed in Appendix 1, those identified below are hereby supplemented by giving the authority granted to a Workers' Compensation Judge or Referee, by either Workers' Compensation Law or its related administrative regulations, to an Arbitrator selected pursuant to this Addendum, to the extent the Arbitrator's authority is not inconsistent with any other authority regarding reconsideration or appeal. For example, the authority given a Workers' Compensation Judge in § 5813 to order a party to pay certain costs as a result of bad faith actions is now given by this Addendum to an Arbitrator selected pursuant to this Addendum. The intent of this provision is to give to an Arbitrator all authority held by a Workers' Compensation Judge or Referee.
 - a. The provisions listed in Appendix 1 hereby supplemented are §§ 4050, 4054, 4056, 4552, 4555, 4555.5, 4607, 4628, 4651.1 4651.3, 4754, 4903 4903.2, 4904 4909, 5100-5106, 5306, 5307.5, 5404, 5405.5, 5408, 5410 5410.1, 5500.5, 5500.6,

5506, 5706, 5707, 5800, 5801, 5802, 5813, 5814, 5814.5 and 6000-6002.

- b. Additional dispute resolution processes of Workers Compensation Law may be supplemented by this Addendum, or the same processes, to a different effect.
- 3. If a conflict arises between the provisions of this Addendum and the dispute resolution processes of Workers' Compensation Law, including processes that are not replaced by this Addendum or that are supplemented by this Addendum, the provisions of this Addendum will take precedence to the fullest extent permitted by law.
- 4. The ADR replaces all dispute resolution processes contained in the California Code of Regulations that were issued pursuant to Workers' Compensation Law, to the extent such provisions conflict with this Addendum and to the fullest extent permitted by law, except as provided by this Addendum.
 - a. It is the intent of this Addendum to not replace 8 CCR § 10344 or 8 CCR § 10346, to the extent that not replacing those provisions furthers the scope of the lawful authority of arbitrators selected pursuant to this Addendum.
- 5. The ADR is not limited to the terms of this Article. The ADR includes the Article Qualified Medical Evaluators, all dispute resolution processes provided in this Addendum and all rules of practice and procedure promulgated in furtherance of the ADR.
- 6. If a conflict arises between the provisions of this Addendum and the dispute resolution processes contained in the California Code of Regulations issued pursuant to Workers' Compensation Law, the provisions of this Addendum take precedence to the fullest extent permitted by law.
- 7. With respect to the ADR, the Trust has the authority to adopt reasonable rules of practice and procedure, as long as such rules do not conflict with provisions of this Addendum.
- 8. Any workers' compensation claim subject to this Addendum that is filed with the Workers' Compensation Appeals Board shall immediately be removed by the Employee and placed in the ADR by contacting the Ombudsman as provided.
- 9. All parties and their representatives may contact the ADR Director regarding any of the Exclusive Lists, ADR Forms or rules of practice and procedure regarding the ADR or any portion of this Addendum. The ADR Director's name, address and telephone are provided in Appendix 2 to this Addendum.
- 10. In addition to any other duties and authority delegated to it by the Trust, the ADR Director has the authority to schedule and enforce the scheduling of Informal Conciliations and Arbitrations.
- 11. The Employee and Employer shall make all good faith efforts to expedite resolution of all matters, including the scheduling and direction of their employees and agents.
- 12. The Ombudsman's purpose is to prevent or limit disputes at the earliest possible time by aiding and counseling Employees regarding claims, complaints and inquires, including explaining to Employees when necessary the effect of the facts and law, which may at appropriate times include an element of mediation. The Ombudsman's duties include being available to respond to Employees before and after any formal action is taken by either the Employee or Employer and acting as a liaison between the Employee and the Employer's insurance carrier. The Ombudsman shall be competent in relevant matters regarding this Addendum and legal and medical matters of Workers' Compensation Law, along with having reasonable knowledge about the crafts in which Employees work.

- a. The Ombudsman is provided at no cost to employees.
- b. All statements by the Employee to the Ombudsman are confidential.
- c. The Trust shall retain and compensate the Ombudsman, or more than one if it determines that is necessary, and determine its qualifications, purposes, duties and powers.
- d. It is the intent of the Addendum, Ombudsman, Trust Agreement and Trustees that the Ombudsman shall not be the attorney, lawyer or legal representative of any Employee.

B. PROCEDURE

- 1. The Employee must notify the Employer of all work-related injuries within thirty days after the occurrence of the injury, as provided by Workers' Compensation Law.
- 2. When the Employer provides the Employee with the claim form and notice of eligibility required by Workers' Compensation Law, it shall concurrently provide the Employee any other documents that may be required by the Trust. Section 5401 of Workers' Compensation Law is hereby supplemented accordingly.
- 3. When the Employer denies, reduces or terminates compensation to an Employee, in addition to any notices and forms required by Workers' Compensation Law, the Employer shall provide Written Notice ("Notice") to the Employee of such action within fifteen days. The Notice must include a summary of the Employer's reason for the action in terms, which are readily understandable by the Employee.
- 4. After an Employee receives a Notice, or after an Employee believes for any reason that he or she is not receiving the entitled compensation, the Employee shall, within twenty days, notify the Ombudsman and attempt to resolve the matter, if the Employee disputes the Employer's action or inaction. This action is in addition to any documents the Employee must file with the Employer.
 - a. The Employee shall provide the Ombudsman a copy of the Notice, if one was issued, and all other documents and information relevant to the belief that he or she is not receiving the entitled compensation.
 - b. The Employer shall provide, at its expense, the Ombudsman with all requested documents and information relevant to the matter.
 - c. The Ombudsman is not responsible for timely completing or filing ADR Forms of other documents for the Employee; it is the Employee's responsibility. If requested, however, the Ombudsman may help the Employee.
 - d. The Ombudsman shall not discuss matters regarding the Employee's claims, complaints or inquires with any attorney representing the Employee.
 - e. The Ombudsman shall provide the Employee with a final response as soon as reasonably possible under the circumstances involved.
- 5. If the Employee is not satisfied with the Ombudsman's final response, the Employee may proceed to Informal Conciliation by filing a Workers' Compensation Grievance ("Grievance") with the ADR Director within ten days after receiving the Ombudsman's final response. The purpose of the Informal Conciliation is to seek a negotiated resolution of the dispute.

- a. The ADR Director shall schedule and hold an Informal Conciliation between the Employee and Employer, and provide notice of the scheduled date.
- b. If requested by the Employee, the Ombudsmen shall aid and counsel the Employee at Informal Conciliation, including explaining, when necessary, the effect of the facts and law. The Ombudsman may, in any event, attend Informal Conciliation.
- 6. If following Informal Conciliation the Employee is not satisfied, the Employee may proceed to Arbitration by filing an Arbitration Request with the ADR Director within twenty days.
 - a. Once an Employee files an Arbitration Request, the Ombudsman shall not aid or counsel the Employee regarding the issues covered in that Request; it becomes the Employee's duty at such time to retain any desired legal representation.
 - b. The ADR Director shall schedule the Arbitration as soon as possible, but shall allow a reasonable time for the preparation of cases.
- 7. Arbitration will be conducted pursuant to rules adopted by the Trust and by utilizing arbitrators selected by the parties using a method adopted by the Trust. The Employee and Employer shall make every effort to arbitrate disputes as quickly, efficiently and economically as possible.
 - a. No written or oral offer of resolution, or statement made in pursuit thereof, is admissible evidence in the Arbitration proceeding. The Arbitrator has no jurisdiction to order otherwise. This provision cannot be waived.
 - b. No statement to the Ombudsman by the Employee, Union, Employer, Medical Provider, Rehabilitation Provider or Medical Evaluator, or statement by the Ombudsman to any of the foregoing, is admissible evidence in the Arbitration proceeding. The parties shall not make any such offer of evidence or seek any order to the contrary; the Arbitrator has no jurisdiction to order otherwise. This provision cannot be waived.
 - c. The retention, scheduling and cost of interpreters will be pursuant to Workers' Compensation Law.
 - d. Arbitrator's authority and dutie s:
 - (1) The Arbitrator shall not add to, subtract from, change or modify any provisions of this Addendum.
 - (2) The Arbitrator shall render a decision within thirty days.
 - (3) The findings of fact, award, order or decision of the Arbitrator are final, except that it is subject to reconsideration and appeal to the extent provided by California Labor Code § 3201.5(a)(1).
 - (4) Since all findings of fact, awards, orders and decisions of the Arbitrator are subject to reconsideration and appeal, they must be in conformance with the relevant law.
 - (5) If a conflict arises between this Addendum's provisions and Workers' Compensation Law, including the provisions that are not replaced or supplemented by this Addendum, and including the dispute resolution processes contained in the California Code of Regulations issued pursuant to Workers' Compensation Law, the Addendum's provisions take precedence to the fullest extent permitted by law.

- 8. All settlements, including any agreements known as settlements, compromises or releases, must be approved by an Arbitrator selected by the ADR Director in the following situations:
 - a. The settlement occurs after the Employee files a Grievance, or
 - b. The settlement involves the issue of permanent disability.
- 9. All parties involved in the ADR have the right to retain legal representation at their own expense.
- 10. In addition to any other requirements of Workers' Compensation Law regarding filing and serving liens, all lien claimants shall concurrently file a copy of all liens and related documents with the ADR Director.
 - 11. Reconsideration and Appeal:
 - a. The Trust is not responsible for any costs incurred by either party regarding Reconsideration or Appeal. If the Trust incurs any costs as a result of Reconsideration or Appeal, other than for any action it may take pursuant to Article XI, Paragraph C, the petitioner or appellant causing such costs shall reimburse the Trust for those costs.
 - b. No written or oral offer of dispute resolution, or statement made in pursuit thereof, can be offered as evidence on Reconsideration or Appeal. This provision cannot be waived.
 - c. No statement to the Ombudsman by the Employee, Union, Employer, Medical Provider, Rehabilitation Provider or Medical Evaluator, or statement by the Ombudsman to any of the foregoing, can be offered as evidence on Reconsideration or Appeal. This provision cannot be waived.

ARTICLE VIII: QUALIFIED MEDICAL EVALUATORS

- A. All qualified medical evaluators ("QME") shall be selected, by the party using the evaluator, from the Exclusive List of Medical Evaluators.
- B. The Trust shall agree to the Exclusive List of Medical Evaluators under the provisions of the Trust Agreement and promulgate it appropriately.
 - 1. The Exclusive List of Medical Evaluators is the May 3, 1995 Official Qualified Medical Evaluators List promulgated by the Department of Industrial Relations, Industrial Medical Council ("Medical Council"), as that list may be amended from time to time by the Medical Council, and with the following limitation: it is limited to QMEs in the counties of Inyo, Mono, Kern, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, San Bernardino, Riverside, San Diego and Imperial, as reflected in the Medical Council's list.
 - 2. The Exclusive List may be changed at any time by the Trust.
- C. Each party may select one QME from the Exclusive List of Medical Evaluators to conduct a comprehensive medical evaluation that must address all medical issues in dispute.
- D. No party may obtain more than one evaluation, except that where an additional evaluation is reasonably necessary to address a specialty, the party needing the additional QME shall select it from the Exclusive List and that QME is limited to addressing only that specialty.

- E. The parties may agree to an Agreed Medical Evaluator ("AME") regarding any issues in dispute.
- F. When an Employee is receiving compensation and the Employer requests an examination pursuant to California Labor Code § 4050, no examination will be deemed an evaluation for purposes of this Article, unless compensation is reduced or terminated as a result of such examination, whereupon the examination will be deemed an evaluation by a QME for purposes of this Article; however, in the latter situation, the Employer will not have violated the limit on one evaluation from a QME even if the Employer previously obtained such an evaluation.
- G. The evaluation and opinion of the authorized medical provider, or providers if there is more than one, is admissible evidence at Arbitration at the request of any party, regardless of whether the requesting party also seeks admission of evidence from a QME or AME.
- H. The Employer is not liable for the cost of medical evaluations furnished by anyone not authorized by this Addendum.

ARTICLE IX: VOCATIONAL REHABILITATION & RETRAINING PROVIDERS

- A. All vocational rehabilitation and retraining providers required to be provided by the Employer under Workers' Compensation Law shall be selected by the Employee from the Exclusive List of Rehabilitation and Retraining Providers.
- B. The Trust shall agree to the Exclusive List of Rehabilitation and Retraining Providers under the provisions of the Trust Agreement and promulgate it appropriately. The Exclusive List may be changed at any time by the Trust.
- C. The Employer is not liable for the cost of vocational rehabilitation or retraining furnished by anyone not authorized by this Addendum.
- D. With respect to vocational rehabilitation and retraining, the Trust has the authority to adopt reasonable rules of practice and procedure regarding selection of providers from the Exclusive List, as long as such rules do not conflict with provisions of this Addendum.

ARTICLE X: ADDITIONAL DISPUTE RESOLUTION RULES

- A. All disputes concerning the interpretation or application of this Addendum must be submitted for resolution as provided in this Addendum.
 - 1. If such dispute arises within the dispute resolution processes of the ADR, including Appendix 1 to this Addendum, or such dispute is susceptible to resolution by those processes, it must be submitted for resolution according to the ADR.
 - 2. Paragraphs A and A.1 do not include disputes that may concern the interpretation or application of this Addendum when they arise in the following circumstances: by deadlock of the Trustees as provided in Article IX of the Trust Agreement; those regarding Trust contributions as provided in Articles III and V of the Trust Agreement; or those regarding Trust contributions as provided in Article IV of this Addendum.
- B. The CBA is amended to the extent necessary that all disputes concerning the interpretation or application of this Addendum will be submitted to resolution as provided by this Addendum and the Trust Agreement. The ADR in this Addendum is intended to operate separate and distinct from any grievance or arbitration procedures contained in the CBA.
- C. Any dispute with an Employee regarding compensation that could otherwise be brought before the Workers' Compensation Appeals Board by the Employer shall be submitted for resolution within

the ADR, with the following modifications:

- 1. The Employer shall not bring the dispute to the Ombudsman.
- 2. The Employer shall provide sufficient written notice to the Employee of the dispute and any action that it intends to take.
- 3. The Employer shall give adequate time to the Employee to seek resolution via the Ombudsman. If resolution is not reached, the Employer has the burden of moving the dispute toward resolution according to the ADR.
- 4. With respect to the Employer bringing matters within the ADR, the Trust has the authority to adopt reasonable rules of practice and procedure, as long as such rules do not conflict with provisions of this Addendum.
- D. Should any party seek to have a court of law confirm or vacate any award, order or decision resulting from an arbitration provided for by this Addendum, such action shall be brought in a state court of competent jurisdiction located in Los Angeles County.
- E. In any civil or arbitral proceeding involving the terms of this Addendum, no statement to the Ombudsman by the Employee, or statement by the Ombudsman to the Employee, can be offered as evidence and the parties shall not make any such offer or seek any order to the contrary, except that the Ombudsman may offer such evidence in defense of a claim brought against it by an Employee.

ARTICLE XI: GENERAL PROVISIONS

- A. The Employer and Union shall cooperate to the fullest extent with the Trust and Safety Group to maintain compliance with all applicable laws.
- B. If any provision of this Addendum or its application to any person or circumstance is held invalid, the invalidity will not affect other provisions or applications of this Addendum that can be given effect without the invalid provision or application, and to this end the provisions of this Addendum are declared to be severable.
- C. In order to protect the jurisdiction, authority and power granted by California Labor Code § 3201.5, the Trust may take any legal action that it deems useful before any administrative or judicial body, including but not limited to, lawsuit, petition, intervention, injunction, amicus curie and writ.

APPENDIX 1

In accordance with Article VII, Paragraph A.1.a of the Addendum, the dispute resolution processes contained in the provisions of Workers' Compensation Law listed in this Appendix are not replaced by the Alternative Dispute Prevention And Resolution System. The headings provided below are not intended to govern, limit modify or effect the scope, meaning or intent of the dispute resolution process or its not being replaced.

PART 1, CHAPTER 1: GENERAL PROVISIONS 3202 Liberal Construction. 3202.5 No Relief From Meeting Burden of Proof. Psychiatric Injury; Determination of Compensability. 3208.3 PART 1, CHAPTER 3: CONDITIONS OF COMPENSATION LIABILITY 3600 Compensation Liability; Requirements. 3600.8 Alternative Commuter Program; Acting Within Course of Employment. Compensation Exclusive Remedy; Action Against Employees. 3601 3602 Concurrence of Conditions of Compensation; Compensation Exclusive Remedy Against Employers. PART 1, CHAPTER 4: COMPENSATION INSURANCE AND SECURITY 3706 Actions at Law Against Employer For Failure to Secure Compensation. 3707 Attachment of Employer's Property. 3708 Presumption of Employer's Negligence. 3708.5 Employee to Send Complaint to Uninsured Employer's Fund. 3709 Judgement in Excess of Compensation. 3709.5 Satisfaction by Employer of Attorney's Fees. 3715 Uninsured Employer, Appeals Board Application In Lieu of Civil Action.

PART 1, CHAPTER 5: SUBROGATION OF EMPLOYER

Misrepresentations; Penalties.

3850 - 3865 Subrogation of Employer.

3820

PART 1, CHAPTER 7: MEDICAL EXAMINATIONS

4050	Employee's Medical Examination.	
4051	Time and Place for Medical Examination.	
4052	Employee's Physician at Examination.	
4053	Refusal of Examination; Compensation.	
4054	Refusal of Examination; Disability Payments.	
4055	Examination Results.	
4055.2	Subpoena of Medical Records.	
4056	Refusal of Medical Treatment.	
4060(b) Liability for Medical-Legal Evaluations.		

PART 1, CHAPTER 11: ASBESTOS WORKERS' ACCOUNT

4401 - 4418 Asbestos Workers' Account: Definitions; Conditions; Benefits; Collections.

PART 2, CHAPTER 2: COMPENSATION SCHEDULES

4551	Employee Misconduct; Compensation Reduction.
4552	Compensation Reduction.
4553	Employer Misconduct; Compensation Increase.
4553.1	Employer Misconduct; Required Findings.
4554	Failure to Pay Compensation; Penalty.
4555	Failure to Pay Compensation; Attorney's Fee.
4555.5	Petition for Award Reduction Denied.
4558	Action at Law for Certain Injury With Power Presses.

4607 4628 4651.1 4651.2 4651.3 4750 4750.5 4751 4753 4754	Proceedings to Terminate Award; Attorney's Fees. Medical-Legal Reports. Temporary Disability; Rebuttable Presumption of Continuance. No Petitions Granted. Denial of Petition; Attorney's Fees. Combined Disability; No Compensation. Subsequent Unrelated Injury; No Compensation. Combined Permanent Disability; Additional Compensation. Additional Compensation; Reductions. Additional Compensation; Award and Payment.
PART 3. CHA	PTER 1: PAYMENT AND ASSIGNMENT
4903	Allowable Liens.
4903.1	Comprise of Claims; Reimbursement of Benefits Paid
4903.2	Conditions for Awarding Attorney's Fees.
4904 4904.1	Lien for Unemployment Benefits. Injured Employee Paid Balance of Award.
4905	Award of Lien Without Request.
4906	Attorney's Fees; Reasonable Amount.
4907	Privilege to Appear, Denial.
4908 4909	Debt Preference.
4909	Payment of Benefits Not Admission of Liability.
	PTER 2: COMPROMISE AND RELEASE
5003	Contents of Agreement to Compromise and Release.
5004	Contents of Agreement to Compromise and Release in Death Case.
PART 3. CHA	PTER 3: LUMP SUM PAYMENTS
5100	Lump Sum Payments; Conditions.
5100.5	Lump Sum Prohibited
5100.6	Rehabilitation Benefits; No Commutation or Settlement.
5101 5102	Amount of Lump Sum; Determination. Lump Sum; Payment, Deposit.
5103	Payment of Deposited Lump Sum.
5104	Appointment of Trustee.
5105	Certificate Evidencing Lump Sum Payment.
5106	Payment of Present Worth of Future Payments.
PART 4, CHA	PTER 1: JURISDICTION
5303	Causes of Action; Joinder.
5306	Proceedings Against Employer's Estate.
5307.5	Appointment of Trustee or Guardian Ad Litem.
PART 4. CHA	PTER 2: LIMITATION OF PROCEEDINGS
5400	Notice to Employer.
5401	Notice to Employee, Claim Form and Filing Requirement.
5401.7	Required Language in Forms.
5402 5403	Employer's Knowledge of Injury. Failure to Give Notice.
5404	Timely Filing of Claim.
5405	Time Limit for Medical and Disability Benefits.
5405.5	Time Limit for Vocational Rehabilitation.
5406	Time Limit for Death Benefits.
5406.5 5407	Time Limit for Asbestos Death Benefits.
5407 5407.5	Time Limit for Employer's Willful Misconduct. Time Limit for Compensation Reduction.
5 107.5	This Diffit for Compensation Reduction.

5408 5409	Appointment of Guardian. Period of Limitations - Affirmative Defense.
5410 5410.1	New and Further Disability. Proceeding to Reduce Disability; Attorney Fees.
5411	Date of Injury.
5412	Date of Injury; Occupational Disease; Cumulative Injury.
PART 4, CHAI	PTER 3: APPLICATIONS AND ANSWERS
5500.5	Liability Period for Occupational Injury & Cumulative Injury; Limitations.
5500.6	Employers Liability for Occupational Injury & Cumulative Injury.
PART 4, CHAI	PTER 4: ATTACHMENTS
5600 - 5603	Writs of Attachment.
DADE A CHAI	OMED 6 ME A DIVIGO
	PTER 5: HEARINGS
5705	Burden of Proof; Affirmative Defenses.
5706	Autopsy Report.
5707	Autopsy; Refusal by Defendants.
PART 4, CHAI	PTER 6: FINDINGS AND AWARDS
5800	Awards; Interest.
5801	Amount and Manner of Compensation; Attorney's Fees.
5802	Likely Future Disability; Nominal Disability Indemnity.
5813	Liability for Additional Expenses.
5814	Unreasonable Delay in Payment; Compensation Increased.
5814.5	Unreasonable Delay in Payment; Attorneys' Fees.

PART 4, CHAPTER 7: RECONSIDERATION AND JUDICIAL REVIEW 6000 - 6002 Undertaking on Stay Order.

SIGNATURE PAGE

FOR THE UN	<u>ION</u> :		
		1	Union
	,]	PRESIDENT	
By: Signature of	`Authorized U	Union Representative	
Local Union	ı Number		
Date Signed	l		
FOR THE EM	PLOYER:		
Contractor or F License Board)		Print exactly as listed with State	
Street Address			
City	State	Zip Code	
Telephone Nun	nber		
Contractors Lic	ense Numbe	er	
By: Signature of	Authorized 1	Employer Representative	
Print Name	and Title of F	Person Signing This Addendum	
Date Signed	I		
Date Insura	nce Coverage	re Starts	

IRONWORKERS WORKERS' COMPENSATION ADDENDUM

This addendum to the Master Collective Bargaining Agreement is entered into between the Associations comprising the Employers Council, Inc. ("Association"), Individual Contractors (Contractors who qualify individually under the State of California requirements for a "Carve Out" program) as listed in Attachment "A", and the District Council of of the State of California and Vicinity ("Union"), pursuant to California Labor Code Section 3201.5. It is the intent of the parties to improve the delivery of benefits and resolution of disputes for workers who claim Workers' Compensation benefits under the laws of the State of California and to reduce the waste and excessive costs that have historically been associated with the delivery of those benefits. Nothing in this Addendum diminishes the entitlement of an employee covered by this Addendum to compensation payments for total or partial disability, vocational rehabilitation, medical treatment and other benefits as required by California law fully paid for by the employer.

SECTION 1

GENERAL PROVISIONS

1.1. This Addendum shall become effective February 6, 2003, and shall remain in effect for at least one year from the date of its execution. Thereafter, it shall continue and remain in force from year to year, unless terminated by one of the bargaining parties. The Association, Individual Contractor, or the Union may withdraw from this Addendum on its anniversary date by giving written notice not less than sixty (60) nor more than one-hundred twenty (120) days prior to the anniversary date of the Addendum. An insured employer may withdraw from this Addendum by giving written notice to the Trust Fund and Program Representative not less than thirty (30) nor more than one-hundred twenty (120) days prior to the end of the policy period. A self-insured employer may withdraw from this Addendum by giving written notice to the Trust Fund and Program

Representative not less than sixty (60) nor more than one-hundred twenty (120) days prior to the anniversary date of the employer's written acceptance of this Agreement. Upon termination of this Addendum in its entirety or with regard to a specific employer, the affected Employer and its employees shall become fully subject to the provisions of the California law to the same extent as they were prior to the implementation of this Addendum. Any claim arising from an accident or illness sustained before the termination of this Addendum shall continue to be covered by the terms of this Addendum, except that a claim remaining open more than three years after the complete termination of this Addendum shall revert to the standard statutory program. If any issue involved in a claim has been arbitrated under this Addendum, the employer and the employee shall not be permitted to raise identical issues under the statutory system.

2. Each individual employer member or the Association shall have the right to determine whether it will participate in this Addendum, and may select its own insurance agent or broker for participation under this Addendum, or have the right to be self-insured. An insurance carrier that wishes to insure an employer who is signatory or wishes to become signatory to this Addendum or a self-insured employer that wishes to become signatory to this Addendum must agree to abide by all terms and conditions of this Addendum, including the use of the dispute resolution process and personnel selected by the Trustees, and the medical network and related medical case management personnel also established under this Addendum. Any such insurance carrier or self-insured employer must also establish to the satisfaction of the Trustees that it has the ability to provide benefits in a timely fashion, without unnecessary delay or litigation, and that it can comply with the spirit and intent of this Addendum and the program established under it. The Trustees can revoke an insurance carrier or self-insurer's privilege to participate in this Addendum at any time for failure to comply with this Addendum.

- 1.3. This Addendum shall apply only to employees whose employment is or was covered by an appropriate Union collective bargaining agreement and this Addendum and any successor Addendum and shall apply only to employees' claims for Workers' Compensation benefits payable by an employer bound to this Addendum and which claims are subject to the laws of the State of California, and which are sustained during their employment by the employer on or after the effective date of this Addendum, irrespective of the date of claim.
- 1.4. All payments required to be made by an insured Employer pursuant to this Agreement shall, in accordance with the law, be made by its workers' compensation insurance carrier, hereinafter the "Insurance Carrier". Similarly, all actions required by the law to be undertaken by the Insurance Carrier rather than the Employer shall be performed by the employer's insurance carrier.
- 1.5. The parties agree that injured employees whose claims are covered by this Addendum and who are receiving weekly temporary total disability benefits for such claims shall receive weekly temporary total disability benefits that are subject to a maximum weekly benefit that is one hundred ten percent (110%) of the maximum weekly benefit that is otherwise applicable under state law.
- 1.6. The California Workers' Compensation Trust shall administer the Program established under this Addendum. The Trust shall have, in addition to rights granted similar Trusts, the authority to set policies and make rules for the administration of the program established under this Addendum, including the expansion of the number of Trustees.
- 1.7. This Agreement represents the complete understanding of the parties with regard to the subject matter dealt with herein, and shall not be construed to modify the provisions of the California Workers' Compensation Law except as specifically set forth in this document or in the rules adopted by the Trust. In any instance of conflict with the California Workers'

Compensation Law, the provisions of this Agreement shall take precedence over provisions of the Law, but only so far as permitted by the provisions of California Labor Code Section 3201.5.

SECTION 2

MEDICAL BENEFITS

- Health & Welfare Trust Fund have established a 2.1. The Trustees of the network of health care providers, to be known as "Authorized Providers". Subject to the exceptions set forth in this Addendum and/or as modified by mutual agreement, the Authorized Providers shall be the exclusive source of all medical treatment required under California Labor Code Section 4600, including medical case management and/or patient advocacy services. All Authorized Providers must be board certified in their respective specialties, where applicable. Attached hereto and marked Attachment "B" is a listing of the current network providers. The parties hereby agree that from time to time the list may Workers' Compensation Trust ("Trustees") be revised by the Trustees of the to incorporate additions and deletions to the network. In no event shall the deletion of a provider disrupt the ongoing treatment of an employee receiving treatment from that provider at the time of deletion. A physician that an employee has designated in writing as his or her personal physician as defined in California Labor Code Section 4600 shall also be considered an Authorized Provider, if the employee has notified the employer in writing prior to the date of the industrial injury of the name, address and telephone number of such designated physician.
- 2.2. In the event of a lost time injury the employer or insurance company must notify the Program Representative within 24 hours of the first report of injury and provide the name, address and telephone number of the injured employee.

- 2.3. The Trustees have approved the Qualified Medical Evaluators listed on Attachment "C" hereto. The Trustees may modify the list from time to time. They shall serve as the exclusive source of comprehensive medial-legal evaluations, other than those received from treating physicians, to be obtained by the employees covered by this Addendum and the insurers of employers who are parties to this Addendum as to claims for Workers' Compensation benefits that are subject to this Addendum.
- 2.4. The selection of an Authorized Provider from the network of providers is in the sole control of the injured employee. After selecting an Authorized Provider to furnish treatment, an employee may change once to another Authorized Provider. When referred by the Authorized Provider to another provider in a particular specialty, the employee may also change once to another Authorized Provider in such specialty. Thereafter, additional changes will be made only with the agreement of the Employer.
- 2.5. In an emergency the employee may seek treatment from a health care provider or facility not otherwise authorized by this Addendum in order to obtain treatment during the emergency. Responsibility for treatment shall be transferred to an Authorized Provider as soon as possible, consistent with sound medical practices.
- 2.6. In the event that an Authorized Provider furnishing treatment to an employee determines that consultation or treatment is necessary from a specialty for which no Authorized Provider has been selected through this Addendum, or in the event that distance makes it impractical for continuing treatment from an Authorized Provider, the Authorized Provider shall, in consultation with the employee, the Employer, and the case nurse, select the additional specialist or the additional provider who offers treatment at a distance not greater than 40 miles one way for the employee.
- 2.7. Medical care obtained from a provider not authorized by this 'Addendum shall not be provided at the expense of the Employer. Nothing in this Addendum shall be construed to

- create a right for an employee to receive care at employer expense that is not reasonably required to cure or relieve a work-related injury.
- 2.8. No provision of this Addendum shall be construed to relieve the employer from its responsibility under the California Labor Code Section 4600 to provide care that is reasonably required to cure or relieve a work-related injury. In no event shall the

Health & Welfare Fund be liable for the cost of medical care required to be provided by the employer pursuant to California Labor Code Section 4600.

- 2.9. Both the Employer and the employee may request a second opinion from an Authorized Provider and/or Qualified Medical Examiner regarding diagnosis, treatment, evaluation or related issues. Only one such second opinion shall be permitted by each party for any issue. It is recognized that resolution of questions concerning an employee's medical condition may involve multiple issues and the need for second opinions from more than one specialty. A request for examination by a physician in a specialty that has not been prescribed by the treating physician shall be considered a request for a second opinion.
- 2.10. Both the Employer and the employee shall be bound by the opinions and recommendations of the Authorized Providers selected in accordance with this Addendum. In the event of disagreement with an Authorized Providers findings or opinions, the sole recourse shall be to obtain a second opinion from another Authorized Provider and/or a Qualified Medical Examiner and to present the opinions through the dispute prevention and resolution procedure established in this Addendum. A mediator or arbitrator may in his or her sole discretion appoint an authorized health care provider and/or Qualified Medical Examiner to assist in the resolution of any medical issue, the cost to be paid by the employer.
- 2.11. The parties to this Addendum agree that it is in their mutual best interests to establish a schedule of fees that an Authorized Provider may charge for providing documents and

- narrative reports. The parties will in consultation with Authorized Providers work to establish such a schedule.
- 2.12. Attached hereto and marked Attachment "D" is a panel of exclusive qualified rehabilitation representatives and independent vocational evaluators approved by the Trustees. The Trustees may subsequently select additional representatives and evaluators. Should an injured worker subject to this Addendum be determined to be a "qualified injured worker" within the meaning of California Labor Code Section 4635 and should the injured employee desire vocational rehabilitation benefits, the injured employee shall select a panel member to provide vocational services and assistance in the creation of a vocational rehabilitation plan. All disputed matters regarding vocational rehabilitation benefits shall be processed through the dispute prevention and resolution process contained in this Addendum.
- 2.13. For Workers permanently injured and who cannot return to work the Trustees will work towards establishing a Vocational Rehabilitation Program that can train Workers in occupations that are in related fields whenever possible. These occupations may include but are not limited to, estimators, inspectors, OSHA inspectors and such other occupations in the construction industry.
- 2.14. If the Employer is controverting the underlying compensability of a claim, the employee is not bound by this Article, other than the use of the list of Qualified Medical Examiners established under this Addendum, pending the resolution of the controversy. Any issue of compensability shall be resolved under Section 3 of this Addendum. If the claim is found to be compensable, the Employer will be responsible for payment for the health care rendered to the employee as required by the law.
- 2.15. The injured employee not determined to be a "qualified injured worker" as defined in paragraph 2.12 may return to modified or light duty work provided the treating physician

has reviewed the description of the modified duties and determined the performance of those skills will not further injure the employee. The injured worker returning to modified work will be paid at the rate specified in the Collective Bargaining Agreement.

SECTION 3

DISPUTE PREVENTION AND RESOLUTION

3.1. The dispute prevention and resolution program shall consist of three components:

Program Representative (Ombudsman)

Mediation

Arbitration.

This program shall be used in place of the filing of an application with the WCAB. Any claim subject to this Addendum filed with the WCAB for resolution will immediately be removed and placed within the program established by this Addendum. This program is the sole means of dispute resolution and no dispute shall proceed to the California Workers' Compensation Appeals Board until it has completed the processes defined and established by this Addendum.

- 3.2. The ADR process may be utilized for cases involving cumulative trauma provided that at least one of the employers is a participant in this agreement. The insurance carriers of previous employers may elect to participate in the ADR process provided they agree to be bound by the decision reached through the Mediation/Arbitration portion of this Agreement. When the ADR process is not utilized the cumulative trauma case will be handled through the current statutory process.
- 3.3. The Trustees shall provide for the preparation of explanatory material, which will be distributed to all current and newly hired employees employed by an employer subject to this Addendum, either before or after injury, or both. The material shall contain an explanation of the program and the rights and responsibilities of the respective parties and

- of the program representative, mediator and arbitrator. The material shall also contain an explanation of the employee's rights to pre-designate his or her physician along with a pre-printed form to pre-designate a physician should the employee desire to do so.
- 3.4. The Trustees shall select at least one individual to serve as program representative, at least one individual to serve as mediator and at least one person to serve as arbitrator. Each individual shall be selected from a list of at least 5 candidates submitted by the Union, and may be discharged/removed at will by vote of the Trustees.
- 3.5. Program representatives, mediators and arbitrators shall be paid by the Trust Fund. The Trustees shall by rule establish a schedule for assessing participating insurance carriers and self-insurers the costs of operating the dispute prevention and dispute resolution program and other administrative costs of the program.
- 3.6. Subject to rules adopted by the Trustees, the program representative shall as soon as is practicable contact by telephone each employee who has sustained compensable lost time injury, to advise the employee of the existence of the program and its operation. Employees subject to this Addendum who believe they are not receiving workers' compensation benefits to which they are entitled, including medical and hospital services, may notify the Program Representative by telephone. An employer may also request assistance from the Program Representative. The Program Representative shall attempt to resolve the issue(s) to the satisfaction of the employee. Within five (5) working days the Program Representative shall advise the employee of the position of the insurer or self-insured employer in terms which are readily understandable by the employee, and shall advise the employee of further steps the employee may need to take in order to reach a fair resolution including mediation and arbitration. The 5-day period may be extended by agreement between the employee and the Program Representative. Upon request, the Program

- Representative shall assist the employee in filing requests for mediation and arbitration related to alleged work related injuries and diseases subject to this Addendum.
- 3.7. The Program Representative shall maintain a log recording all activity including, but not limited to, dates and summaries of communications with employees, employers, and insurers, as well as any agreements to extend the time frames provided for in this Addendum. All written and oral communications involving the Program Representative shall be considered confidential pursuant to the California Constitution Article I Section I and pursuant to Evidence Code Sections 1115 et. seq..
- 3.8. If a dispute related to a claim governed by this Addendum is not resolved pursuant to Section 3.1 within five working days from the employee's contacting the Program Representative, the employee may request mediation services. The employer may also request mediation services related to any claim for benefits subject to this Addendum. No matter may proceed to mediation until completion of the five-day period and any agreed extension thereto. In no event may a matter proceed to mediation without first being presented to the Program Representative.
- 3.9. A request for mediation may be made no later than sixty days subsequent to the expiration of the five-day period and any agreed extension thereto. The insurer and employee may extend this sixty-day period by mutual agreement.
- 3.10. The Workers' Compensation Trust Fund shall appoint a mediator within three (3) working days of receipt of a request for mediation. Upon request by the employee, the Program Representative shall assist the employee in any mediation proceedings. The mediation process shall be subject to rules adopted by the Trustees.
- 3.11. The mediator shall contact the employee and a representative of the employer's insurer.
 Both the employee and employer's insurer shall supply the mediator with requested information. The mediator may meet separately with the employee and the representative

of the insurer, and/or may schedule a mediation session to be attended by both the employee and the representative of the insurer. If the dispute is not resolved within fifteen (15) working days of the appointment of the mediator, the mediation process shall be deemed exhausted unless the employee and the representative of the insurer agree otherwise.

- 3.12. If a dispute related to a claim has not been resolved at mediation, the employee or representative of the insurer may request the Workers' Compensation Trust Fund to appoint an arbiter to arbitrate the dispute. Absent extraordinary circumstances, arbitration must be requested no later than sixty (60) days after the mediation process involving the same dispute has been exhausted or the date the parties have mutually objected to mediation.
- 3.13. The Workers' Compensation Trust Fund shall appoint an arbiter within three (3) working days of receipt of a request. Upon request by the employee who is not represented by an attorney, the Program Representative shall assist the employee with procedural matters related to the arbitration, but shall not be permitted to act in the capacity of an attorney. An employee receiving assistance from a Program Representative but who is not represented in the arbitration proceeding by an attorney shall be considered by the arbitrat to be an "unrepresented worker".
- 3.14. In conducting the arbitration, the arbiter shall apply the same presumptions of compensability, statutory construction and rules of admissibility of evidence that would be applied by a Workers' Compensation Referee conducting a proceeding under the California Labor Code. The arbiter shall have the same authority as a Workers' Compensation Judge over discovery, the production of documents, the issuance of subpoenas and other procedural matters related to the arbitration hearing.
- 3.15. Absent a contrary stipulation between the employee and the representative of the insurer, an arbitration proceeding shall be conducted at a location designated by the

Workers' Compensation Trust Fund and no more than forty (40) miles from the residence of
the employee if within California and otherwise at the offices of the

Workers'
Compensation Trust Fund or within forty (40) miles of the

Workers'
Compensation Trust Fund's offices.

- 3.16. All arbitration proceedings shall be electronically recorded. The original tape and record of the proceeding shall be retained by the Workers' Compensation Trust Fund. Copies of the recording and record shall be supplied to the employee and representative of the insurer upon request. A transcript of the proceeding shall be prepared upon the request of the arbiter, employee or representative of the insurer.
- 3.17. Within ten (10) working days following the conclusion of the arbitration, the arbiter shall issue his or her written findings of fact, decision, order and, if applicable, award. The arbiter is authorized to include in any award all relief available from a Workers' Compensation Judge including but not limited to enhancements to compensation due to any unreasonable delay in the payment of compensation by the insurer as provided for by law, and/or relief under Labor Code Sections 132a and/or 4553 and/or attorneys' fees and costs. The arbiter is authorized to resolve all liens not settled by the parties, provided that written notice of the time and place of the arbitration is given to the lien holders advising them of their right to appear and present argument and testimony in support of their lien claim.
- 3.18. Any findings of fact, award, order or decision of the arbiter shall be in the same form and have the same force and effect as findings of fact, an award, order or decision of a California Workers' Compensation Referee.
- 3.19. The decision of the arbiter shall be subject to review pursuant to California Labor Code Section 3201.5(a)(1) by the California Workers' Compensation Appeals Board in the same manner as provided for reconsideration of a final order, decision or award made and filed by

- a Workers' Compensation Judge and by the California Court of Appeal pursuant to the procedures set forth in California Labor Code Section 3201.5(a)(1).
- 3.20. Nothing in this alternative dispute resolution process shall prevent an employee from retaining an attorney to represent the employee in any and all stages of the alternative dispute resolution process established by this Addendum. Such retention of an attorney is the sole and absolute choice of the employee. The retention of an attorney shall not diminish the ability of the Program Representative, Mediator, Arbitrator or case nurse to speak directly with the employee in the attorney's physical or telephonic presence. In no event shall the
 Workers' Compensation Trust Fund be liable for the expense of such representation. The terms and conditions of any agreement between an employee and the employee's retained counsel are not subject to this Addendum nor does this Addendum in any fashion alter or replace any or all California law applicable to an agreement between an attorney and a worker pursuing Workers' Compensation benefits.
- 3.21. The California Workers' Compensation Trust is to be created by an Agreement and Declaration of Trust effective as of January 1, 2003.

Effective March 1, 2003 a contribution of one and one-half cents (\$0.015) per hour for each hour paid for and/or worked will be made to the California Workers' Compensation. Trust by all signatory employers whether or not they participate in the program established by this Addendum. These contributions will be subject to all the provisions of the Agreement and Declaration of Trust dated as of January 1, 2003 establishing that program and the provisions of the California Workers' Compensation Plan adopted by the Board of Trustees. It is understood said Worker' Compensation Plan shall be administered pursuant to the Trust Agreement.

All rules of the Master Agreement relating to collection of delinquent contributions, and enforcement of the contribution obligation shall apply to the contributions provided for herein.

SIGNATURE PAGE

APPROVED BY THE UNION	APPROVED BY THE EMPLOYERS
Dated: Feb-6-63	Dated:
District Council of	Employers
The State of California & Vicinity	*
Chairman Negotiating Committee	Chairman Employers Negotiating Committee
The undersigned insurance companies hereby	agree to the terms of the program set forth here
Name of Insurance Company	2 4
Ву:	Dated:
Name of Insurance Company	
2	David Control

APPENDIX

The Workers' Compensation Process in a Carve-out: Frequently Asked Questions³

The following questions and answers will help workers, especially injured workers, understand the workers' compensation process.

?? How can I avoid getting hurt on the job?

Employers are required to have an Injury and Illness Prevention Program. Learn about and participate in your employer's program. Report unsafe conditions to your employer and union, or call Cal/OSHA, the state agency that enforces health and safety laws.

?? What should I do if I get hurt on the job?

Tell your supervisor or union representative right away. If your injury or illness developed gradually (like tendonitis or hearing loss), report it as soon as you learn it was caused by your job. Reporting promptly helps prevent problems and delays in receiving your benefits, including necessary medical care.

If it is a medical emergency, you should go to an emergency room right away. If it is not an emergency, your employer may tell you where to go for treatment by consulting an agreed upon list of medical providers which labor and management have compiled. Tell the health care provider who treats you that your injury or illness is job-related.

Fill out a claim form and give it to your employer. Your employer must give you a claim form within one working day after learning about your injury or illness. When you return the claim form to your employer, it is called filing the claim form. Your claim form is your request for workers' compensation benefits.

?? Is workers' compensation the same as State Disability?

No. Workers' compensation is only for injuries or illnesses that occur due to employment. State Disability is for injuries or illnesses that are not work-related. The Employment Development Department (EDD) handles State Disability.

³ This section was adapted from "Workers' Compensation in California A Guidebook for Injured Workers," prepared for the Commission on Health and Safety and Workers' Compensation by the Institute of Industrial Relations (IIR), University of California at Berkeley and the Labor Occupational Health Program (LOHP), Center for Occupational and Environmental Health, School of Public Health, University of California at Berkeley, 2002.

?? If I file a claim, can my employer fire me?

It is illegal for your employer to punish or fire you for having a job injury or for filing a workers' compensation claim when hurt on the job. California Labor Code Section 132a prohibits this kind of discrimination.

It is also illegal for your employer to discriminate against you because of a serious disability. The federal Americans With Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) prohibit this.

The federal Family and Medical Leave Act (FMLA) says that an employer with 50 or more employees usually must let you take unpaid leave for 12 weeks if you need time off for a serious medical condition

?? What should I do to make sure that the claims process proceeds smoothly?

- ?? Keep good records of all discussions with people regarding your injury.
- ?? Keep track of your medical condition and how it affects your ability to work.
- ?? Keep pay stubs and time sheets, showing the dates you worked and when you were off work.
- ?? Keep records of any out-of-pocket expenses that workers' compensation could cover (for example, prescriptions or travel time to medical appointments).
- ?? Learn more about workers' compensation.
- ?? Know your support system if you have a problem, with the ombudsman in place as your first line of support.

?? Can I choose the physician who will treat me?

Your choice of physician may be determined by the labor-management agreement. The labor management agreement may provide an agreed upon list of physicians, that may be the exclusive source of all medical treatment, from which you can select a doctor.

Unless the agreement restricts your choices, you may predesignate a physician. If you do not predesignate, the employer may designate the physician who will provide treatment in the first weeks after your injury.

?? Is there a return-to-work program?

A carve-out agreement may establish a return-to-work program to help you get back to work at your regular job, a modified job, or an alternative job.

A modified job is your old job with changes that meet your physician's work restrictions. Alternative work is different from your old job.

Return-to-work programs are not required, but they can offer benefits for both the employer and the employee. The potential advantage of a carve-out is that the improved communication between employee, physician, and employer may facilitate a return to suitable work.

?? Who decides whether I can return to work while recovering?

Your treating physician will determine whether you can work while recovering.

?? Who decides what type of work I can do while recovering?

Your treating physician is responsible for telling your employer what kind of work you can and cannot do, as well as what changes are needed in your work schedule or assignments, while you are recovering from a workplace injury or illness.

You, your treating physician, and your employer should review your job description and discuss the changes needed in your job. Clear and specific limits on your job tasks while recovering are called work restrictions. They are intended to protect you from further injury.

?? What if I do not agree with the physician's evaluation of my condition and the work I can handle?

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You have a right to question or disagree with a report written by your primary treating physician. You can: (1) send a letter to the claims administrator within 30 days of receiving the report if you do not have an attorney; or (2) have an attorney representing you send a letter to the claims administrator within 20 days of receiving the report. These time limits may be changed by legislation after March 2004.

If you meet one of these time limits, you can get a medical evaluation from another physician.

?? What happens if I do not agree with my employer about the work assigned or offered to me?

If your employer assigns or offers you work that does not meet the work restrictions required by your treating physician, you do not have to accept it. However, to avoid losing benefits, you should attempt to resolve the situation with assistance from your physician, the ombudsman, and your employer.

?? What happens if I cannot do my old job and my employer doesn't offer me other work?

If your employer cannot offer either modified duty or alternative work, you will not be required to work.

However, to avoid losing benefits, you should attempt to resolve the situation with assistance from your physician, the ombudsman, and your employer.

?? What retraining is available to me?

For injuries on or after January 1, 2004, a new supplemental job displacement benefit (SJDB) for permanent partial disability provides for payment in the form of vouchers to be used at state-approved or accredited schools for education-related retraining or skill enhancement or both. Up to 10 percent of the SJDB can be used for counseling. This benefit is available for injured workers who are unable to return to their old job.

Voluntary rehabilitation or retraining benefits may be negotiated as part of a carve-out agreement.

Improved opportunities for returning to work with the employer in a carve-out may reduce the likelihood that an employee has to resort to the SJDB in an attempt to find other work.

?? How can I find out more about workers' compensation?

Talk to the ombudsman or the union representative. Your employer is required by law to give you information about workers' compensation.

?? Besides workers' compensation benefits, can I get any other financial assistance?

Other benefits may be available. These include: (1) benefits paid by state and federal governments, such as State Disability Insurance (SDI), unemployment insurance, and Social Security Disability Insurance (SSDI) payments; (2) benefits offered by employers and unions, such as sick leave, group health insurance, long-term disability insurance (LTD), and salary continuation plans; and (3) payments if your injury was caused by someone other than your employer.

For More Information and Help: A Resource Guide⁴

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- **Your Employer.** Your employer is required to post information and give you written materials that explain workers' compensation. If you have questions, you can contact your supervisor, someone else in management, or your employer's personnel or benefits department.
- The Claims Administrator. This person handles workers' compensation claims for your employer. Most claims administrators work for insurance companies or other organizations that handle claims for employers. Some claims administrators work directly for large employers that handle their own claims. This person may also be called a claims examiner or claims adjuster. The claims administrator is required to send you written information about your claim and may answer questions. If you can't reach the claims administrator, ask to speak with his or her supervisor.
- State Division of Workers' Compensation. DWC administers workers' compensation laws and provides information and help to injured workers. Check the Government Pages at the front of the white pages of a phone book. Look under: State Government Offices/Industrial Relations. See also the DWC website: www.dir.ca.gov/dwc.

∠ ∠ Workers' Compensation Appeals Board. This is where workers' compensation

judges hear cases and decide on problems and disputes. If a problem can't be resolved through discussions with the claims administrator, an I&A officer can help you request a hearing before a workers' compensation judge, or an attorney can request a hearing and represent you before the judge. If you disagree with a decision of a workers' compensation judge, you can request reconsideration of the judge's decision by a seven-member Appeals Board. In a carve-out, the arbitration decision may be appealed to the seven-member appeals board.

In a carve-out which provides for the alternative dispute resolution process, the arbitrator's decision can be appealed to the seven member Appeals Board.

⁴ This section was adapted from "Workers' Compensation in California A Guidebook for Injured Workers," prepared for the Commission on Health and Safety and Workers' Compensation by the Institute of Industrial Relations (IIR), University of California at Berkeley and the Labor Occupational Health Program (LOHP), Center for Occupational and Environmental Health, School of Public Health, University of California at Berkeley, 2002.

∠ ✓ Vocational Rehabilitation. State rehabilitation consultants oversee vocational rehabilitation, make decisions about vocational rehabilitation benefits, and help resolve problems. ∠

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- **Applicants' Attorney.** These are lawyers who represent injured workers in their workers' compensation cases.
- **Your Treating Doctor.** You can ask your treating doctor about the kind of medical care you need, the kind of work you can do while recovering, and whether you will have a permanent disability. You can also ask your treating doctor for copies of all medical reports that he or she sends to the claims administrator.
- **Labor Organizations.** Your union may help resolve problems with your workers' compensation claim, tell you about other benefits, negotiate changes needed in your job, protect you from discrimination, and refer you to legal services. You can also seek help from a central labor council or building trades council in your area.
- **©** Ccupational Health Clinics. Doctors at occupational health clinics specialize in work-related injuries and illnesses. For information about occupational health clinics, call the Association of Occupational and Environmental Clinics at 1-202- 347-4976, or ask your personal physician or health plan. See also the AOEC website: www.aoec.org.
- **Injured Worker Support Groups.** These groups share practical information and provide support for people with job injuries. For information about support groups and other resources for injured workers, see the website of the CTD Resource Network, Inc.: www.tifaq.org. Through this website, you can link to: Support Groups.

∠∠ Health & Safety Agencies and Organizations

For help with health or safety hazards at work:

California Division of Occupational Safety and Health (Cal/OSHA). Check the Government Pages at the front of the white pages of a phone book. Look up: State Government Offices/Industrial Relations/Occupational Safety & Health. Cal/OSHA takes worker complaints, inspects workplaces, and enforces health and safety laws. See also the Cal/OSHA website: www.dir.ca.gov/dosh.

Labor Occupational Health Program (LOHP), University of California at Berkeley (phone: 1-510-642-5507; website: *www.lohp.org*). Offers information, training, and help on health and safety matters, including workers' compensation. Serves workers, unions, and others in California and nationwide.

Labor Occupational Safety and Health Program (LOSH), University of California at Los Angeles (phone: 1-310-794-5964; website: www.losh.ucla.edu). Offers information, training, and help on health and safety matters, including workers' compensation. Serves workers, unions, and others in California and nationwide.

∠∠Other State and Federal Agencies—Financial Assistance

California Employment Development Department (EDD) (phone: 1-800-480-3287). For a local office, check the Government Pages at the front of the white pages of a phone book. Look under: State Government Offices. EDD gives information on State Disability Insurance (SDI) and unemployment insurance (UI) benefits. See also the EDD website: www.edd.ca.gov.

U.S. Social Security Administration (SSA) (phone: 1-800-772-1213). For a local office, check the Government Pages at the front of the white pages of a phone book. Look under: United States Government Offices. SSA gives information on Social Security disability benefits and other benefits. See also the SSA website: www.ssa.gov.

✓ Other State and Federal Agencies—Discrimination Complaints
If you face discrimination for filing a workers' compensation claim or for having a job
injury, you can contact an Information & Assistance officer, an applicants' attorney, or
your union.

If you face discrimination because of a permanent disability or other medical condition, you can contact an attorney who specializes in employment law. You can get names of attorneys from a local bar association, a county legal aid society, your union, or other injured workers. You can also contact the State Bar of California about lawyer referral services (phone: 1-415-538-2250; website: www.calbar.ca.gov), or check the yellow pages of a phone book and look under: Attorney Referral Service.

You can also ask for help from these agencies:

U.S. Equal Employment Opportunity Commission (EEOC) (phone: 1-800-669-4000). For a local office, check the Government Pages at the front of the white pages of a phone book. Look under: United States Government Offices/ Discrimination. See also the EEOC website: www.eeoc.gov.

California Department of Fair Employment and Housing (phone: 1-800-884-1684). For a local office, check the Government Pages at the front of the white pages of a phone book. Look under: State Government Offices. See also the DFEH website: www.dfeh.ca.gov.

∠ Books and Other Materials

Your Medical Evaluation and Getting Your Medical Evaluation. Available in English and Spanish. For free copies, contact the Industrial Medical Council, P.O. Box 8888, San Francisco, CA 94128-8888 (phone: 1-800-794-6900; website: www.dir.ca.gov/imc).

California Labor Code. Contains most of the California workers' compensation laws. Available in public libraries and law libraries. Can be viewed online: *www.dir.ca.gov*. Important sections include:

?? Construction industry carve-outs: 3201.5

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- ?? Other Industry carve-outs: 3201.7
- ?? Eligibility for benefits: 3350-3371, 3600-3605, 5401
- ?? Rules against suing employers; exceptions: 3602, 3706, 4558
- ?? Nondiscrimination: 132a
- ?? Fraud: 3820
- ?? Willful misconduct by employer or employee: 4551-4553.1
- ?? Rights to choose the treating physician: 3550(e), 4600-4601
- ?? Medical evaluations: 139.2, 4060-4067.5, 4620-4628
- ?? TD and PD benefits: 4453-4459, 4650-4663
- ?? Vocational rehabilitation: 139.5, 4635-4647
- ?? Death benefits: 4700-4728
- ?? Settlement: 5000-5106

Caution: Certain rules that apply to your case may be found in case law and not the Labor Code. Case law includes past decisions of workers' compensation judges, the Appeals Board, and state courts.

Schedule for Rating Permanent Disabilities. This state publication is used to rate permanent disabilities. There are two schedules, depending on your date of injury. To see the schedule that applies to you, contact a state Information & Assistance officer. To view the schedule for workers injured April 1997 or later, go to the Division of Workers' Compensation website: www.dir.ca.gov/dwc (link to: Reports, Schedules, and Publications).

Take Charge of Your Workers' Compensation Claim, by Christopher A. Ball, 2002. A detailed guide for workers, available in bookstores or from Nolo Press (phone: 1-800-728-3555; website: www.nolo.com).

California Workers' Compensation Practice, Continuing Education of the Bar, California, updated 2003. A comprehensive reference for attorneys, available in law libraries.

Navigating the California Workers' Compensation System, 1996. A report of injured workers' experiences, prepared by U.C. Berkeley's Labor Occupational Health Program. For a free copy, contact the Commission on Health and Safety and Workers' Compensation (phone: 1-415-703-4220; website: www.dir.ca.gov/chswc).

LABOR CODE SECTION 3201.5 (As amended by Senate Bill 899, effective April 19, 2004) (For the Construction Industry)

- **3201.5.** (a) Except as provided in subdivisions (b) and (c), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any provision in a collective bargaining agreement between a private employer or groups of employers engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying, and construction inspection and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:
- (1) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270, 5270, 5271, 5272, 5273, 5275, and 5277.
- (2) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.
- (3) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.
 - (4) Joint labor management safety committees.
 - (5) A light-duty, modified job or return-to-work program.

- (6) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.
- (b) (1) Nothing in this section shall allow a collective bargaining agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division. The portion of any agreement that violates this paragraph shall be declared null and void.
- (2) The parties may negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers that are eligible for group health benefits and nonoccupational disability benefits through their employer.
 - (c) Subdivision (a) shall apply only to the following:
- (1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars (\$250,000) or more, or any employer that paid an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars (\$250,000) in at least one of the previous three years.
- (2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers' compensation insurance premiums of two million dollars (\$2,000,000) or more.
- (3) Employers or groups of employers that are self-insured in compliance with Section 3700 that would have projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.
- (4) Employers covered by an owner or general contractor provided wrap-up insurance policy applicable to a single construction site that develops workers' compensation insurance premiums of two million dollars (\$2,000,000) or more with respect to those employees covered by that wrap-up insurance policy.
- (d) Employers and labor representatives who meet the eligibility requirements of this section shall be issued a letter by the administrative director advising each employer and labor representative that, based upon the review of all documents and materials submitted as required by the administrative director, each has met the eligibility requirements of this section.
- (e) The premium rate for a policy of insurance issued pursuant to this section shall not be subject to the requirements of Section 11732 or 11732.5 of the Insurance Code.
- (f) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:

- (1) Upon its original application and whenever it is renegotiated thereafter, a copy of the collective bargaining agreement and the approximate number of employees who will be covered thereby.
- (2) Upon its original application and annually thereafter, a valid and active license where that license is required by law as a condition of doing business in the state within the industries set forth in subdivision (a) of Section 3201.5.
- (3) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement.
 - (4) The name, address, and telephone number of the contact person of the employer.
- (5) Any other information that the administrative director deems necessary to further the purposes of this section.
- (g) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:
- (1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.
- (2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.
- (h) Commencing July 1, 1995, and annually thereafter, the Division of Workers' Compensation shall report to the Director of the Department of Industrial Relations the number of collective bargaining agreements received and the number of employees covered by these agreements.
- (i) By June 30, 1996, and annually thereafter, the Administrative Director of the Division of Workers' Compensation shall prepare and notify Members of the Legislature that a report authorized by this section is available upon request. The report based upon aggregate data shall include the following:
 - (1) Person hours and payroll covered by agreements filed.
 - (2) The number of claims filed.
 - (3) The average cost per claim shall be reported by cost components whenever practicable.
- (4) The number of litigated claims, including the number of claims submitted to mediation, the appeals board, or the court of appeal.
 - (5) The number of contested claims resolved prior to arbitration.
 - (6) The projected incurred costs and actual costs of claims.
 - (7) Safety history.
 - (8) The number of workers participating in vocational rehabilitation.
 - (9) The number of workers participating in light-duty programs.

The division shall have the authority to require those employers and groups of employers listed in subdivision (c) to provide the data listed above.

(j) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivisions (h) and (i) based on the collective bargaining agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis the administrative director shall make available an updated list of employers and unions entering into collective bargaining agreements containing provisions authorized by this section.

LABOR CODE SECTION 3201.7 (As amended by Senate Bill 899, effective April 19, 2004) (For all Industries)

- **3201.7.** (a) Except as provided in subdivision (b), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any labor-management agreement that meets all of the following requirements:
- (1) The labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.
- (2) The labor-management agreement is restricted to the establishment of the terms and conditions necessary to implement this section.
- (3) The labor-management agreement has been negotiated in accordance with the authorization of the administrative director pursuant to subdivision (d), between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:
- (A) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.
- (B) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.
- (C) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.
 - (D) Joint labor management safety committees.
 - (E) A light-duty, modified job, or return-to-work program.

- (F) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.
- (b) (1) Nothing in this section shall allow a labor-management agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division; nor shall any agreement authorized by this section deny to any employee the right to representation by counsel at all stages during the alternative dispute resolution process. The portion of any agreement that violates this paragraph shall be declared null and void.
- (2) The parties may negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers that are eligible for group health benefits and nonoccupational disability benefits through their employer.
 - (c) Subdivision (a) shall apply only to the following:
- (1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of fifty thousand dollars (\$50,000) or more, and employing at least 50 employees, or any employer that paid an annual workers' compensation insurance premium, in California, of fifty thousand dollars (\$50,000), and employing at least 50 employees in at least one of the previous three years.
- (2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers' compensation insurance premiums of five hundred thousand dollars (\$500,000) or more.
- (3) Employers or groups of employers, including cities and counties, that are self-insured in compliance with Section 3700 that would have projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.
- (d) Any recognized or certified exclusive bargaining representative in an industry not covered by Section 3201.5, may file a petition with the administrative director seeking permission to negotiate with an employer or group of employers to enter into a labor-management agreement pursuant to this section. The petition shall specify the bargaining unit or units to be included, the names of the employers or groups of employers, and shall be accompanied by proof of the labor union's status as the exclusive bargaining representative. The current collective bargaining agreement or agreements shall be attached to the petition. The petition shall be in the form designated by the administrative director. Upon receipt of the petition, the administrative director shall promptly verify the petitioner's status as the exclusive bargaining representative. If the petition satisfies the requirements set forth in this subdivision, the administrative director shall issue a letter advising

each employer and labor representative of their eligibility to enter into negotiations, for a period not to exceed one year, for the purpose of reaching agreement on a labor-management agreement pursuant to this section. The parties may jointly request, and shall be granted, by the administrative director, an additional one-year period to negotiate an agreement.

- (e) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:
- (1) Upon its original application and whenever it is renegotiated thereafter, a copy of the labormanagement agreement and the approximate number of employees who will be covered thereby.
- (2) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the labor-management agreement.
 - (3) The name, address, and telephone number of the contact person of the employer.
- (4) Any other information that the administrative director deems necessary to further the purposes of this section.
- (f) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:
- (1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, where such filing is required by law, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.
- (2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.
- (g) Commencing July 1, 2005, and annually thereafter, the Division of Workers' Compensation shall report to the Director of Industrial Relations the number of labor-management agreements received and the number of employees covered by these agreements.
- (h) By June 30, 2006, and annually thereafter, the administrative director shall prepare and notify Members of the Legislature that a report authorized by this section is available upon request. The report based upon aggregate data shall include the following:
 - (1) Person hours and payroll covered by agreements filed.
 - (2) The number of claims filed.
 - (3) The average cost per claim shall be reported by cost components whenever practicable.
- (4) The number of litigated claims, including the number of claims submitted to mediation, the appeals board, or the court of appeal.
 - (5) The number of contested claims resolved prior to arbitration.
 - (6) The projected incurred costs and actual costs of claims.
 - (7) Safety history.
 - (8) The number of workers participating in vocational rehabilitation.

- (9) The number of workers participating in light-duty programs.
- (10) Overall worker satisfaction.

The division shall have the authority to require employers and groups of employers participating in labor-management agreements pursuant to this section to provide the data listed above.

(i) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivisions (f) and (g) based on the labor-management agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis, the administrative director shall make available an updated list of employers and unions entering into labor-management agreements authorized by this section.

Chapter 4.5 Division of Workers' Compensation Subchapter 1.8 Administrative Director – Administrative Rules Collective Bargaining Agreements Under Labor Code Section 3201.5 and 3201.7

Section 10200 – Definitions.

As used in this subchapter:

- (a) "Employee" means an employee covered under either:
 - (1) A provision of a collective bargaining agreement recognized by the Administrative Director pursuant to Labor Code section 3201.5; or
 - (2) A labor-management agreement recognized by the Administrative Director pursuant to Labor Code section 3201.7.
- (b) "Employer" means either:
 - (1) For the purpose of Labor Code section 3201.5, a private employer or group of employers actually engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying, and construction inspection in California. A public entity may be a member of a group of employers.
 - (2) For the purpose of Labor Code section 3201.7., a private employer, group of employers, or a city or county that is self-insured in compliance with Labor Code section 3700.
- (c) "Labor-management agreement" under Labor Code section 3201.7 (or 3201.7 provision) means a provision, clause, addendum, or other section of a collective bargaining agreement that establishes or would establish any program permitted under Labor Code section 3201.7 (a). Such a program shall be maintained solely for the purpose of complying with the requirements of Division 4 the Labor Code and shall be administered separately from any other employee benefit plan.
- (d) "Provision of a collective bargaining agreement" under Labor Code section 3201.5 (or "3201.5 provision") means a provision, clause, addendum, or other section of a collective bargaining agreement that establishes or would **establish** any program permitted under Labor Code section 3201.5 (a). Such a program shall be maintained solely for the purpose of complying with the requirements of Division

4 the Labor Code and shall be administered separately from any other employee benefit plan.

- (e) "Union" means a bona fide labor organization that is the recognized or certified exclusive bargaining representative of the employees of an employer. A labor organization is bona fide under this regulation if:
 - (1) it actually represents employees in California as to wages, hours, and working conditions:
 - (2) its officers have been elected by secret ballot or otherwise in a manner consistent with federal law, and
 - (3) it is free of domination or interference by any employer and has received no improper assistance or support from any employer.

Authority: Sections 133, 3201.5, and 5307.3, Labor Code. Reference: Sections 3201.5 and 3201.7, Labor Code.

Section 10201 – Procedure for Determining Eligibility under Labor Code section 3201.5.

- (a) Every employer and union proposing to establish any program permitted by Labor Code section 3201.5 shall jointly request the Administrative Director to determine eligibility, as follows:
 - (1) Employers shall submit the following documents:
 - (A) Upon its original application and whenever it is renegotiated thereafter, a copy of the underlying collective bargaining agreement and the approximate number of employees who will be covered thereby. The collective bargaining agreement shall be complete, including side letters and all appendices and other documents referred to in the agreement that relate to the program permitted by Labor Code section 3201.5, including but not limited to trust agreements and agreements concerning providers. If the application is on behalf of a group of employers, the application shall clearly define the group and shall state whether all the members of the group are bound by the 3201.5 provision, or whether each member must individually agree to be bound.
 - (B) Upon its original application and annually thereafter, evidence of a valid and active license where that license is required by law as a condition of doing business in the state within the industries set forth in subdivision (a) of Section 3201.5.
 - (C) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement.
 - (D) Upon its original application and annually thereafter, the name, address, and telephone number of the contact person of the employer.
 - (E) Upon its original application and annually thereafter, evidence that the employer is actually engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy- duty mechanics, surveying, or construction inspection in California, or has a plan for immediate engagement in one of those businesses.
 - (F) Upon its original application and annually thereafter, evidence that the employer:
 - (1) is developing or projecting an annual workers' compensation insurance premium, in California, of two hundred fifty thousand

dollars (\$250,000) or more, or has paid an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars (\$250,000) in at least one of the previous three years; or

- (2) is a group of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, which develops or projects annual workers' compensation insurance premiums of two million dollars (\$2,000,000) or more; or
- is an employer or group of employers that is self-insured in compliance with Section 3700 that has projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers; or
- (4) is an employer, who is properly signatory to a project agreement, and is covered by an owner or general contractor provided wrap-up insurance policy applicable to a single construction site that develops workers' compensation insurance premiums of two million dollars (\$2,000,000) or more with respect to those employees covered by that wrap-up insurance policy.

Every member of a group of employers must maintain separately administered workers' compensation insurance or a self-insurance program distinct from all other types of insurance. Every member must maintain this insurance or self- insurance in one of the ways enumerated in Labor Code section 3700; but it is not necessary that all members maintain insurance or a self-insurance program in the same way. Every member must meet one of the minimum premium or cost requirements listed in paragraphs (1) through (4) above.

- (G) Upon its original application and annually thereafter a statement that it is able and willing to supply the data required by Labor Code section 3201.5(i).
- (H) If the application is on behalf of a group of employers, evidence that:
 - (1) membership in the group is limited to employers that meet all the criteria of Labor Code section 3201.5 and these regulations;
 - (2) the group shall, on behalf of its individual members, provide the data required by Labor Code section 3201.5(i);

- (3) the group shall maintain records of its membership satisfactory to the Administrative Director for the purpose of readily ascertaining the facts required by Section 10202(c). Membership records shall include evidence of security for the payment of compensation for each member, including the insurance policy number, or a copy of the certificate of self-insurance issued pursuant to Labor Code section 3700. Membership records shall also include the approximate number of employees for each individual member of the group who is bound by the collective bargaining agreement. Copies of membership records shall be delivered to the Administrative Director on request.
- (2) Unions shall submit the following documents:
- (A) Upon its original application and annually thereafter, a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.
- (B) Upon its original application and annually thereafter, the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.
- (C) Upon its original application and annually thereafter evidence that the union is a bona fide labor organization in that:
 - it actually represents employees engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy- duty mechanics, surveying, or construction inspection in California as to wages, hours and working conditions,
 - (2) its officers have been elected by secret ballot or otherwise in a manner consistent with federal law, and
 - it is free of domination or interference of any employer and has received no improper assistance or support from any employer.

It will be presumed that a union is bona fide if for a period of five years it has actually entered into collective bargaining agreements with employers in California and has filed all appropriate reports with the United States Department of Labor in that period. If a union is not presumed to be bona fide, it shall present evidence satisfactory to the Administrative Director that it meets the criteria of a bona fide labor organization.

- (3) Any person may submit documents to the Administrative Director that bear on the eligibility of an applicant. Copies of all such documents received shall be sent to the applicants for comment.
- (b) [Reserved for regulation relating to confidentiality]
- (c) Issuance of a Letter of Eligibility

Within 30 days after receiving an application, the Administrative Director shall notify the applicants that the application is complete or shall specify what further information is needed to complete the application. Within 30 days after the time an application is completed, the Administrative Director shall either (1) issue a letter of eligibility, or (2) deny eligibility. If eligibility is denied, the Administrative Director shall inform the parties of the reasons therefor. For good cause and upon written notice to the applicants, the Administrative Director may extend the periods of notification for an additional 30 days.

(d) Period of Eligibility

The letter of eligibility shall state the beginning date of eligibility, which shall be no earlier than 15 days before the parties submitted their request to the Administrative Director under this section. A letter of eligibility shall remain valid for the same period as the 3201.5 provision of the collective bargaining agreement, but no longer then three years from the date of issuance of the letter. Upon the effective date of this regulation, the Administrative Director shall re-issue letters of eligibility to parties which have already received them.

(e) Effect of a Letter of Eligibility

- (1) A letter of eligibility is a determination by the Administrative Director that the parties meet the eligibility requirements of Labor Code section 3201.5. A letter of eligibility is not a determination by the Administrative Director that the collective bargaining agreement or any part of it is in compliance with Labor Code section 3201.5.
- (2) A 3201.5 provision is valid and binding only if there was a letter of eligibility in effect at the time of injury.
- (3) A letter of eligibility issued to a group of employers shall be valid as to an individual member of the group if all the following facts are established as of the time the provision is alleged to be in effect and at the time of injury:
 - (A) the group of employers possessed a current letter of eligibility;
 - (B) the individual employer was a member of the group;

- (C) the individual employer had signed the 3201.5 provision;
- (D) the individual employer was actually engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying, or construction inspection in California and possesses a valid and active license as required by Labor Code section 3201.5(a); and
- (E) the individual employer was is compliance with Labor Code section 3201.5(c).

(f) Renewal of Eligibility

- (1) At least 30 days prior to the expiration of the letter of eligibility, the parties shall submit to the Administrative Director updated copies of the documents and other evidence required by subdivision (a) of this Section. However, if certain documents and other evidence are completely unchanged since the submission of the previous annual report required by Section 10204, the party responsible for submitting the updates may instead submit a statement under penalty of perjury that there has been no change in the document or evidence since the previous annual report. The Administrative Director may nonetheless require any party to submit the actual documents or evidence.
- (2) Within 30 days after receiving the information required under subdivision (f)(1), the Administrative Director shall either: (1) renew the letter of eligibility for the same period of time set forth in subdivision (d); or (2) deny eligibility. If eligibility is denied, the Administrative Director shall inform the parties of the reasons therefor.
- (g) All insurers, self-insured employers, and third party administrators who adjust claims subject to a Section 3201.5 provision shall comply with the applicable provisions of Section 138.4 of the Labor Code and shall comply with the administrative regulations contained in Title 8, Cal. Code Regs., Division 1, Chapter 4.5:
 - (1) Subchapter 1: Article 1.1, commencing with Section 9700; Article 5, commencing with Section 9780; Article 6, commencing with Section 9796; Article 8, commencing with Section 9810; Article 8.5, commencing with Section 9880; Article 10, commencing with Section 9900;
 - (2) Subchapter 1.5: Article 1, commencing with Section 10100; Article 2, commencing with Section 10101; Article 3, commencing with Section 10105; Article 4, commencing with Section 10110; Article 5, commencing with Section 10111; Article 6, commencing with Section 10113; Article 7, commencing with Section 10115; Article 6, commencing with Section 10116; Article 7, commencing with Section 10122; and,

(3) Subchapter 1.6, commencing with Section 10150.

Authority: Sections 133, 3201.5, and 5307.3, Labor Code. Reference: Section 3201.5, Labor Code.

Section 10202 – Procedure for Recognizing Labor-Management Agreements under Labor Code section 3201.7.

- (a) Any union in an industry not covered by Labor Code section 3201.5 who seeks to negotiate a 3201.7 provision with an employer shall file a petition with the Administrative Director, verified under penalty of perjury, on the "Petition for Permission to Negotiate a Section 3201.7 Labor-Management Agreement" form (DWC Form RGS-1), contained in Section 10202.1. A proof of service by mail declaration shall be attached to the petition indicating that the complete petition, including all attachments, were served on the employer, or group of employers.
- (b) Within 10 days after receiving a petition, the Administrative Director shall notify the union that the petition is complete or shall specify what further information is needed to complete the petition. Within 30 days after the time the petition is completed, the Administrative Director shall either (1) issue to the union and employer, or group of employers, a letter of eligibility to negotiate a 3201.7 provision, or (2) deny the petition. If the petition is denied, the Administrative Director shall inform the union of the reasons therefor. For good cause and upon written notice to the union, the Administrative Director may extend the periods of notification for an additional 30 days.
- (c) The letter of eligibility to negotiate shall remain valid for a period not to exceed one year from the date of issuance. Upon joint request by the union and the employer, or group of employers, an additional one year period to negotiate a 3201.7 agreement shall be granted.
- (d) Upon receipt of the letter of eligibility to negotiate, the union and employer, or group of employers, may negotiate a 3201.7 provision. A negotiated and signed 3201.7 provision between a union and employer, or group of employers, will be recognized by the Department of Industrial Relations as valid and binding upon application by the parties to the Administrative Director.
 - (1) The employer, or group of employers, shall submit the following documents with the application:
 - (A) Upon its original application and whenever it is renegotiated thereafter, a copy of the 3201.7 provision, and the approximate number of employees who will be covered thereby. If the application is on behalf of a group of employers, the application shall clearly define the group and shall state whether all the members of the group are bound by the 3201.7 provision, or whether each member must individually agree to be bound.
 - (B) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement.

- (C) Upon its original application and annually thereafter, the name, address, and telephone number of the contact person of the employer, or group of employers.
- (D) Upon its original application and annually thereafter, evidence of a valid and active license where that license is required by law as a condition of doing business in the state.
- (E) Upon its original application and annually thereafter, evidence that the employer:
 - (1) is developing or projecting an annual workers' compensation insurance premium, in California, of fifty thousand dollars (\$50,000) or more, and employing at least fifty (50) employees, or has paid an annual workers' compensation insurance premium, in California, of fifty thousand dollars (\$50,000), and employing at least fifty (50) employees in at least one of the previous three years; or
 - (3) is a group of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers' compensation insurance premiums of five hundred thousand dollars (\$500,000) or more; or
 - is an employer or group of employers, including cities and counties, that is self-insured in compliance with Labor Code section 3700 that has projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.
- (F) Upon its original application and annually thereafter a statement that it is able and willing to supply the data required by Labor Code section 3201.7(h).
- (G) If the application is on behalf of a group of employers, evidence that:
 - (1) membership in the group is limited to employers that meet all the criteria of Labor Code section 3201.7 and these regulations;
 - (2) the group shall, on behalf of its individual members, provide the data required by Labor Code section 3201.7(h);

- (3) the group shall maintain records of its membership satisfactory to the Administrative Director for the purpose of readily ascertaining the facts required by subdivision (h) of the section. Membership records shall include evidence of security for the payment of compensation for each member, including the insurance policy number, or a copy of the certificate of self-insurance issued pursuant to Labor Code section 3700. Membership records shall also include the approximate number of employees for each individual member of the group who is bound by the collective bargaining agreement. Copies of membership records shall be delivered to the Administrative Director on request.
- (2) Unions shall submit the following documents with the application:
- (A) Upon its original application and annually thereafter, a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.
- (B) Upon its original application and annually thereafter, the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.
- (e) Every member of a group of employers must maintain separately administered workers' compensation insurance or a self-insurance program distinct from all other types of insurance. Every member must maintain this insurance or self-insurance in one of the ways enumerated in Labor Code section 3700; but it is not necessary that all members maintain insurance or a self-insurance program in the same way. Every member must meet one of the minimum premium or cost requirements listed above in subdivision (d)(1)(E), paragraphs (1) through (3).
- (f) Any person may submit documents to the Administrative Director that bear on the application of the union and employer, or group of employers. Copies of all such documents received shall be sent to the union and employer, or group of employers, for comment.
- (g) Within 30 days after receiving the application, the Administrative Director shall notify the union and employer, or group of employers, that the application is complete or shall specify what further information is needed to complete the application. Within 30 days after the time the application is completed, the Administrative Director shall either (1) issue to the union and employer, or group of employers, a letter recognizing the 3201.7 provision, or (2) deny the application. If the application is denied, the Administrative Director shall inform the union and employer, or group of employers, of the reasons therefor. For good cause and upon written notice to the union and employer, or group of employers, the

Administrative Director may extend the periods of notification for an additional 30 days.

- (h) The recognition of the Section 3201.7 provision is a determination by the Administrative Director that the parties meet the eligibility requirements of Labor Code section 3201.7. Recognition is not a determination by the Administrative Director that the 3201.7 agreement, or any part of it, is in compliance with Labor Code section 3201.7.
 - (1) A 3201.7 provision is valid and binding only if there was a complete application filed with the Administrative Director at the time of injury.
 - (2) A 3201.7 provision negotiated and signed by a group of employers shall be valid as to an individual member of the group if all the following facts are established as of the time the provision is alleged to be in effect and at the time of injury:
 - (A) the group of employers has a complete application filed with the Administrative Director;
 - (B) the individual employer was a member of the group;
 - (C) the individual employer had signed the 3201.7 provision;
 - (E) the individual employer was is compliance with Labor Code section 3201.7(c).
- (i) All insurers, self-insured employers, and third party administrators who adjust claims subject to a Section 3201.7 provision shall comply with the applicable provisions of Section 138.4 of the Labor Code and the administrative regulations contained in Title 8, Cal. Code Regs., Division 1, Chapter 4.5:
 - (1) Subchapter 1: Article 1.1, commencing with Section 9700; Article 5, commencing with Section 9780; Article 6, commencing with Section 9796; Article 8, commencing with Section 9810; Article 8.5, commencing with Section 9880; Article 10, commencing with Section 9900;
 - (2) Subchapter 1.5: Article 1, commencing with Section 10100; Article 2, commencing with Section 10101; Article 3, commencing with Section 10105; Article 4, commencing with Section 10110; Article 5, commencing with Section 10111; Article 6, commencing with Section 10113; Article 7, commencing with Section 10115; Article 6, commencing with Section 10116; Article 7, commencing with Section 10122; and,
 - (3) Subchapter 1.6, commencing with Section 10150.

Authority: Sections 133, and 5307.3, Labor Code.

Reference: Section 3201.7, Labor Code.

Section 10202.1. Petition for Permission to Negotiate a Section 3201.7 Labor-Management Agreement (DWC Form RGS-1).

STATE OF CALIFORNIA Department of Industrial Relations Division of Workers' Compensation Administrative Director Post Office Box 420603 San Francisco, CA 94142-0603 Telephone: (415) 703-4600

Petition for Permission to Negotiate a Section 3201.7 **Labor-Management Agreement**

Labor Code § 3201.7; Title 8, California Code of Regulations § 10202

Please submit the following information to the Administrative Director of the Division of Workers' Compensation to obtain a letter advising the below-named union and employer, or group of employers, their eligibility to enter into negotiations for the purpose of reaching agreement on a labor-management agreement authorized by Section 3201.7 of the California Labor Code.
(Print or Type Name and Addresses)
1. Union Information
Name of Union: Contact Person and Title:
Principal Address:
2. Employer Information (For group of employers, please use separate pages to list all individual employers.)
Name of Employer: Contact Person and Title:
Federal Employers Identification Number (FEIN): Principal Business of Employer: Principal Address:

- 3. Please describe the bargaining unit or units to be covered by the Section 3201.7 labor-management agreement, and provide the approximate number of employees in the unit(s).
- 4. Please attach proof of the union's status as the exclusive bargaining representative of the employee's in the above-described bargaining unit(s).

DWC Form RGS-1 (012004)

5.	Please attach a copy of the current collective bargaining agreement or agreements in effect between the union and the employer.			
I declar and cor	re under penalty of perjury under the laws of the State of California that the foregoing is true rect.			
EXECU	UTED AT , CALIFORNIA ON			
	(City), CALIFORNIA ON(Date)			
BY:(Ori	, TITLE: ginal Signature of Union Representative)			
You must attach a proof of service by mail declaration indicating that the petition and all supporting evidence was mailed to the employer, or for a group of employers, all individual employers.				
DWC Fo	orm RGS-1 (012004)			
	ty: Sections 133, and 5307.3, Labor Code. ce: Section 3201.7, Labor Code.			

Section 10203. Reporting Data.

- (a) On or before March 31 of every year, every employer subject to either a 3201.5 or 3201.7 provision shall provide the information specified in subdivision (b) for the previous calendar year. For each claim with a date of injury on or after January 1, 2004, the information reported under subdivision (b)(8) through (16) in the first mandatory reporting year under subdivision (b)(8), shall also be updated annually thereafter for the following three calendar years.
 - (2) To provide the information required in subsection (b), the employer shall either:
 - (A) Provide the information on a form prescribed by the administrative director, either DWC Form GV-1, as set forth in Section 10203.1, or DWC Form GV-2, as set forth in Section 10203.2; or
 - (B) Provide the administrative director with written authorization to collect the information from the appropriate claims administrator. If the administrative director is unable to obtain the information with the written authorization, the employer shall remain responsible for obtaining and submitting the information.
 - (3) Groups of employers shall report the information required by this section on behalf of its members. The information shall be reported as to every individual employer covered by the 3201.5 or 3201.7 provision. Groups shall also report aggregated figures for all employers in the group covered by the 3201.5 or 3201.7 provision.
 - (b) The report shall contain the following information:
 - (1) The name of the individual employer and the union.
 - (2) The principal business of the employer.
 - (3) The dates the 3201.5 or 3201.7 provision were in effect during the previous calendar year.
 - (4) The name of the insurer, if any, and the insurance policy number. If self-insured, the name and certificate number of the self-insured employer.
 - (5) The name, address and telephone number of any administrator, ombudsperson, mediator or arbitrator employed in an alternative dispute resolution system.

- (6) Hours worked by covered employees, reported by trade or craft.
- (7) Payroll in accordance with the rules of the Workers' Compensation Insurance Rating Bureau [WCIRB]. Payroll shall be reported by class code as set by the WCIRB.
- (8) The number of claims filed in the previous calendar year pursuant to Labor Code section 5401. The claims shall be reported in the following categories:
 - A. The number of claims that were medical only. As to those claims, there shall also be a report on the total amount of paid costs and the total amount of incurred costs.
 - B. The number of claims that included a claim for indemnity. As to those claims, there shall also be a report on total amount of paid costs and total amount of incurred costs in each of the following categories: temporary disability, permanent disability, life pensions, death benefits, vocational rehabilitation, medical services, and medical-legal expenses.
- (9) The number of claims filed pursuant to Labor Code section 5401 in the previous calendar year that were resolved and the number that remained unresolved on December 31 of the previous calendar year. These numbers together should equal the total number reported in sub-section (8) above. For the purpose of this section, "resolved" means one in which ultimate liability has been determined, even though payments may be made beyond the reporting period.
- (10) Of the claims that were filed and/or resolved in the previous calendar year, the number that were resolved with a denial of compensability.
- (11) Of the claims that were filed and/or resolved in the previous calendar year, the number that were resolved at each of the following stages: before mediation, at or after mediation, at or after arbitration, at or after the appeals board, or at or after the court of appeals. If the 3201.5 or 3201.7 provision contains another dispute resolution procedure, whether instead of or in addition to arbitration or mediation, the report must identify the type of procedure, its stage in the overall alternate dispute resolution process, and the same respective information regarding the resolution of claims.
- (12) The title and case number of every application filed with the appeals board in the previous calendar year concerning a claim alleged by any party to fall within the 3201.5 or 3201.7 provision, regardless of whether the employee had the right to file such an application.

- (13) The title and court number of every civil action, including petitions for writs and injunctions in any court, state or federal, filed in the previous calendar year, that concerned a claim alleged by any party to fall within the 3201.5 or 3201.7 provision.
- (14) The number of injuries and illnesses reported on the United States
 Department of Labor OSHA Form No. 300 for those employees covered by
 the 3201.5 or 3201.7 provision. The same number multiplied by 200,000
 and divided by hours worked (as reported in sub-section 6 above).
- (15) The number of employees covered by the 3201.5 or 3201.7 provision who participated in vocational rehabilitation.
- (16) If the 3201.5 or 3201.7 provision established a light-duty or return to work program, the number of employees who participated in that program.
- (17) For employers covered by a 3201.7 provision, an employee survey that measures worker satisfaction with the 3201.7 alternative dispute resolution procedures. The survey shall be designed and administered by agreement between the employer and the union.
- (c) In addition to the data above, the employer may include in its report any explanatory material, narrative account, or comment that the employer believes is necessary to understand the data.
- (d) Notwithstanding this section, all employers shall be subject to the reporting requirements of the Workers' Compensation Information System, Title 8, Cal. Code Regs., Section 9700 et seq.
- (e) The data obtained by the Administrative Director pursuant to Section 10203 shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation may create derivative works based on the collective bargaining agreements and data. Those derivative works shall not be confidential, but shall be public.

Authority: Sections 133, 3201.5, and 5307.3, Labor Code. Reference: Sections 3201.5, 3201.7, and 3201.9, Labor Code.

Section 10203.1. Aggregate Employer Annual Report (DWC Form GV-1).

STATE OF CALIFORNIA
Department of Industrial Relations
Division of Workers' Compensation
Administrative Director
Post Office Box 420603
San Francisco, CA 94142
Telephone: (415) 703-4600

Aggregate Employer Annual Report

Labor Code §§ 3201.5 and 3201.7; Title 8, California Code of Regulations § 10203

For the 12 month period ending December 31, 20 .

The following information is being obtained by the Administrative Director pursuant to Labor Code §§ 3201.5 and 3201.7, and Title 8, California Code of Regulations Section 10203. This form shall be filed by on or before March 31 of every year by every employer or group of employers participating in a "carve-out" program under Labor Code §§3201.5 or 3201.7. The information provided on this form shall be for the 12 month period ending December 31 of the previous calendar year. The information shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation may create derivative works based on collective bargaining agreements and data. Those derivative works shall not be confidential, but shall be public.

For groups of employers that have received an above-reference letter of eligibility, information obtained from individual employers to provide the information required in this form shall be maintained by the administrator of the Section 3201.5 or 3201.7 program, or the contact person or persons identified in Title 8, California Code of Regulations § 10201(a)(1)(D) and (2)(B), or § 10202(d)(1)(C) and (2)(B). This information may be obtained using the form entitled "Individual Employer Reporting Data" (DWC Form GV-2) (Contained in Title 8, California Code of Regulations § 10203.2. Such information shall be available for inspection by the Administrative Director upon reasonable written request.

Name of Program:

Statute Authorizing Program (circle one): 3201.5 - Construction 3201.7 - Other

1. List all employers with FEIN numbers (Federal Employers Identification Numbers) doing business under the Section 3201.7 agreement. If you need more space, use separate pages.

Name:

FEIN:

Principal business of employer (please circle one or more):

3201.5: construction maintenance rock, sand, gravel, cement and asphalt operations

heavy-duty mechanics surveying construction inspection

3201.7: education and health services financial activities government

information

leisure and hospitality manufacturing natural resources and mining

professional and business services transportation and utilities

wholesale and retail trade other (specify)

DWC Form GV-1 (012004)

Name: FEIN: Principal business of employer (please circle one or more): 3201.5: construction maintenance rock, sand, gravel, cement and asphalt operations heavy-duty mechanics surveying construction inspection 3201.7: education and health services financial activities government information leisure and hospitality manufacturing natural resources and mining professional and business services transportation and utilities wholesale and retail trade other (specify) Name: FEIN: Principal business of employer (please circle one or more): 3201.5: construction maintenance rock, sand, gravel, cement and asphalt operations heavy-duty mechanics surveying construction inspection 3201.7: education and health services financial activities government information leisure and hospitality manufacturing natural resources and mining professional and business services transportation and utilities wholesale and retail trade other (specify) Name: FEIN: Principal business of employer (please circle one or more): 3201.5: construction maintenance rock, sand, gravel, cement and asphalt operations heavy-duty mechanics construction inspection surveying 3201.7: education and health services financial activities government information leisure and hospitality manufacturing natural resources and mining professional and business services transportation and utilities

Name: FEIN:

Principal business of employer (please circle one or more):

wholesale and retail trade other (specify)

3201.5: construction maintenance rock, sand, gravel, cement and asphalt operations

heavy-duty mechanics surveying construction inspection

3201.7: education and health services financial activities government

information

leisure and hospitality manufacturing natural resources and mining

professional and business services transportation and utilities

wholesale and retail trade other (specify)

2. Name(s) of union(s) participating in the Section 3201.5 or 3201.7 agreement:

DWC Form GV-1 (012004) 3. Dates that the Section 3201.5 or 3201.7 provision	was in effect during the previous calendar year:
Beginning date:	Ending date:
4. Name of insurer(s):	
5. Insurance policy number(s):	
5a. If an employer is legally self-insured under author Self-Insurance Plans, list certificate number and nam	rity of the Department of Industrial Relations' Office of e:
6. Name of administrator of ADR system:	
7. Address of administrator:	
8. Telephone number of administrator: ()	
9. Name of ombudsperson employed in an ADR syst	tem (if any):
10. Address of ombudsperson:	
11. Telephone number of ombudsperson: () (Note: If there is more than one ombudsper information).	son, attach additional sheets with the required
12. Name of mediator employed in an ADR system (i	f any):
13. Address of mediator:	
14. Telephone number of mediator: () (Note: If there is more than one mediator, attach add	itional sheets with the required information).
15. Name of arbitrator employed in an ADR system (if any):
16. Address of arbitrator:	
17. Telephone number of arbitrator: () (Note: If there is more than one arbiter, attach addition)	onal sheets with the required information).
18. Total person hours worked by covered employed	es, indicate by trade or craft:
Trade: Trade: Trade:	Person Hours: Person Hours: Person Hours:

Trade:	Person Hours: Person Hours:			
DWC Form GV-1 (012004)				
Trade: Trade: Trade: Trade: Trade: Trade:	Person Hours: Person Hours: Person Hours: Person Hours: Person Hours:			
(Note: If there are more trades represented, attach additional sheets with the required information on person hours worked.)				
19. Attach payroll for the employer(s) in accordance with the rules of Rating Bureau (WCIRB). Payroll shall be reported by class code as se format.				
Questions 20 through 45 apply to claims filed in the pre Labor Code §§ 5401 or 5402. For claims with a date of 2003, the information reported shall be for the year in v subsequent calendar years until the claim is resolved. more than four calendar years (including the year the on each claim.	injury on or after January 1, which the claim was filed, and the However, information from no			
20. Number of claims that were medical only:				
21. Total amount of paid costs for medical only claims:				
22. Total amount of incurred costs for medical only claims:				
23. Number of claims that included a claim for indemnity:				
24. Total amount of paid temporary disability for indemnity claims:				
25. Total amount of incurred temporary disability for indemnity claims:				
26. Total amount of paid permanent disability for indemnity claims:				
27. Total amount of incurred permanent disability for indemnity claim	s:			
28. Total amount of paid life pensions for indemnity claims:				
29. Total amount of incurred life pensions for indemnity claims:				
30. Total amount of paid death benefits for indemnity claims:				
31. Total amount of incurred death benefits for indemnity claims:				
32. Total amount of paid vocational rehabilitation for indemnity claim	s:			

33. Total amount of incurred vocational rehabilitation for indemnity claims:

34. Total amount of paid medical services for indemnity claims:

35. Total amount of incurred medical services for indemnity claims:

DWC Form GV-1 (012004)

- 36. Total amount of paid medical legal expenses for indemnity claims:
- 37. Total amount of incurred medical legal expenses for indemnity claims:
- 38. Number of claims that were resolved (resolved means one in which ultimate liability has been determined, even though payments may be made beyond the reporting period):
- 39. Number of claims that remained unresolved:

Note: The numbers in questions 38 and 39 added together should equal the summation of the number of medical only claims (question 20) and indemnity claims (question 23).

- 40. The number of claims that were resolved with a denial of compensability:
- 41. The number of claims that were resolved before mediation:
- 42. The number of claims that were resolved at or after mediation:
- 43. The number of claims that were resolved at or after arbitration.

Note: For employers, or group of employers, who utilize a alternative dispute resolution system that includes resolution procedures in addition to or in place of mediation and/or arbitration, please identify on an attachment each resolution procedure used and the number of claims that were resolved using that procedure.

- 44. The number of claims that were resolved at or after the Workers' Compensation Appeals Board (WCAB):
- 45. The number of claims that were resolved at or after the court of appeals:
- 46. Provide the title and number of every application filed with the WCAB during the previous calendar year concerning the claim alleged by any party to fall within the Section 3201.5 or 3201.7 provision, regardless of whether the employee had the right to file such a application (example in italics):

Title: Jane Doe vs. ABC Co

Title: Number:

Note: If there are more applications, attach additional sheets with the required information.

47. Provide the title and court number of every civil action, including petitions for writs and injunctions in any court, state or federal, filed in the previous calendar year, that concerned a claim alleged by any party to fall within the Section 3201.5 or 3201.7 provision (example in italics):

Title: Jane Doe vs. ABC Co Number: Alameda County No 3 76052

Title: Number: Number: Number:

Number:

Title:	Number:
Title:	Number:
Title:	Number:
DWC Form GV-1 (012004)	
Title:	Number:
Title:	3.7 1
TILL.	Number:

Note: If there are more civil actions, attach additional sheets with the required information.

- 48. The number of injuries and illnesses reported in the previous calendar year on the United States Department of Labor OSHA Form No. 300 for those employees covered by the Section 3201.5 or 3201.7 provision:
- 49. The number of employees covered by the Section 3201.5 or 3201.7 provision who participated in vocational rehabilitation:
- 50. The number of employees covered by the Section 3201.5 or 3201.7 provision who participated in a light duty program or modified return to work programs established under Section 3201.5 or 3201.7:
- 51. For an employer, or group of employers, who is covered by a 3201.7 provision, please provide an employee survey that measures worker satisfaction with the applicable 3201.7 alternative dispute resolution procedures. The survey shall be designed and administered by agreement between the employer and the union.
- 52. Please attach any explanatory material, narrative account or comment that you believe would enable the Division to understand your response(s).

Programs are encouraged to submit updated information covering prior calendar year claims reported to Division of Workers' Compensation.

DWC Form GV-1 (012004)

Title:

Authority: Sections 133, and 5307.3, Labor Code.

Reference: Sections 3201.5, 3201.7, and 3201.9, Labor Code.

Section 10203.2. Individual Employer Annual Report (DWC Form GV-2).

STATE OF CALIFORNIA
Department of Industrial Relations
Division of Workers' Compensation
Administrative Director
Post Office Box 420603
San Francisco, CA 94142
Telephone: (415) 703-4600

Individual Employer Annual Report

Labor Code §§ 3201.5 and 3201.7; Title 8, California Code of Regulations § 10203

For the 12 month period ending December 31, 20 .

The following information is being obtained by the Administrative Director pursuant to Labor Code §§ 3201.5 and 3201.7, and Title 8, California Code of Regulations Section 10203. An individual employer who is participating in a Section 3201.5 or 3201.7 program with a group of employers shall provide the information requested in this form to the administrator of the Section 3201.5 or 3201.7 program, or the contact person or persons identified in Title 8, California Code of Regulations § 10201(a)(1)(D) and (2)(B) or §10202(d)(1)(C) or (2)(B). The information provided to the program shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation may create derivative works based on collective bargaining agreements and data. Those derivative works shall not be confidential, but shall be public. The information provided by the employer shall be maintained by the administrator of the program and is available for inspection by the Administrative Director upon reasonable written request.

Name of Program:

Statute Authorizing Program (circle one): 3201.5 - Construction 3201.7 - Other

1. Employer Information.

Name:

FEIN:

Principal business of employer (please circle one or more):

3201.5: construction maintenance rock, sand, gravel, cement and asphalt operations

heavy-duty mechanics surveying construction inspection

3201.7: education and health services financial activities government

information

leisure and hospitality manufacturing natural resources and mining

professional and business services transportation and utilities

wholesale and retail trade other (specify)

2. Name of union participating in the Section 3201.5 or 3201.7 agreement:

DWC Form GV-2 (012004)

3. Dates that the Section 3201.5 or 3201.7 provision was in effect during the previous calendar year:

Ending date:

Beginning date:

DWC Form GV-2 (012004)

4. Name of insurer:			
5. Insurance policy number:			
5a. If an employer is legally self-insured under authority of the Depart Self-Insurance Plans, list certificate number and name:	rtment of Industrial Relations' Office of		
6. Attach payroll in accordance with the rules of the Workers' Compensation Insurance Rating Bureau (WCIRB). Payroll shall be reported by class code as set by the WCIRB and provided in table format.			
7. Total person hours worked by covered employees, indicate by tra	nde or craft:		
Trade:	Person Hours:		
Trade: Trade:	Person Hours: Person Hours:		
riaue.	reison flours.		
(Note: If there are more trades represented, attach additional sheets with the required information on person hours worked.)			
Questions 8 through 27 apply to claims filed in the previous calendar year pursuant to Labor Code §§ 5401 or 5402. For claims with a date of injury on or after January 1, 2003, the information reported shall be for the year in which the claim was filed, and the subsequent calendar years until the claim is resolved. However, information from no more than four calendar years (including the year the claim was filed) shall be reported on each claim.			
8. Number of claims that were medical only:			
9. Total amount of paid costs for medical only claims:			
10. Total amount of incurred costs for medical only claims:			
11. Number of claims that included a claim for indemnity:			
12. Total amount of paid temporary disability for indemnity claims:			
13. Total amount of incurred temporary disability for indemnity clair	ms:		
14. Total amount of paid permanent disability for indemnity claims:			
15. Total amount of incurred permanent disability for indemnity claim			
16. Total amount of paid life pensions for indemnity claims:			

- 17. Total amount of incurred life pensions for indemnity claims:
- 18. Total amount of paid death benefits for indemnity claims:
- 19. Total amount of incurred death benefits for indemnity claims:
- 20. Total amount of paid vocational rehabilitation for indemnity claims:
- 21. Total amount of incurred vocational rehabilitation for indemnity claims:
- 22. Total amount of paid medical services for indemnity claims:
- 23. Total amount of incurred medical services for indemnity claims:
- 24. Total amount of paid medical legal expenses for indemnity claims:
- 25. Total amount of incurred medical legal expenses for indemnity claims:
- 26. Number of claims that were resolved (resolved means one in which ultimate liability has been determined, even though payments may be made beyond the reporting period):
- 27. Number of claims that remained unresolved:

Note: The numbers in questions 26 and 27 added together should equal the summation of the number of medical only claims (question 8) and indemnity claims (question 11).

- 28. The number of claims that were resolved with a denial of compensability:
- 29. The number of claims that were resolved before mediation:
- 30. The number of claims that were resolved at or after mediation:
- 31. The number of claims that were resolved at or after arbitration.

Note: For employers who utilize a alternative dispute resolution system that includes resolution procedures in addition to or in place of mediation and/or arbitration, please identify on an attachment each resolution procedure used and the number of claims that were resolved using that procedure.

- 32. The number of claims that were resolved at or after the Workers' Compensation Appeals Board (WCAB):
- 33. The number of claims that were resolved at or after the court of appeals:
- 34. Provide the title and number of every application filed with the WCAB during the previous calendar year concerning the claim alleged by any party to fall within the Section 3201.5 or 3201.7 provision, regardless of whether the employee had the right to file such a application (example in italics):

Title: Jane Doe vs. ABC Co Number: SFO 0123456

Title: Number:

Note: If there are more applications, attach additional sheets with the required information.

DWC Form GV-2 (012004)

35. Provide the title and court number of every civil action, including petitions for writs and injunctions in any court, state or federal, filed in the previous calendar year, that concerned a claim alleged by any party to fall within the Section 3201.5 or 3201.7 provision (example in italics):

Title: Jane Doe vs. ABC Co Number: Alameda County No 3 76052

Title: Number:

Note: If there are more civil actions, attach additional sheets with the required information.

- 36. The number of injuries and illnesses reported in the previous calendar year on the United States Department of Labor OSHA Form No. 300 for those employees covered by the Section 3201.5 or 3201.7 provision:
- 37. The number of employees covered by the Section 3201.5 or 3201.7 provision who participated in vocational rehabilitation:
- 38. The number of employees covered by the Section 3201.5 or 3201.7 provision who participated in a light duty program or modified return to work programs established under Section 3201.5 or 3201.7:
- 39. Please attach any explanatory material, narrative account or comment that you believe would enable the Division to understand your response(s).

Programs are encouraged to submit updated information covering prior calendar year claims reported to Division of Workers' Compensation.

DWC Form GV-2 (012004)

Authority: Sections 133, and 5307.3, Labor Code.

Reference: Sections 3201.5, 3201.7, and 3201.9, Labor Code.

Section 10204. Annual Reports.

- (a) On or before March 31 of every year, the parties covered by the 3201.5 or 3201.7 provision shall submit updated copies of the documents and other evidence required by Section 10201 or Section 10202. However, if certain documents and other evidence are completely unchanged since the previous submission, the party responsible for submitting the annual update may instead submit a statement under penalty of perjury that there has been no change in the document or evidence since the previous submission. The Administrative Director may nonetheless require any party to submit the actual documents or evidence.
- (b) If the parties have not submitted the updated documents required by this section, or if the employer has not timely submitted the data required by Section 10203 the Administrative Director may, after notice and an opportunity to respond, either: (1) revoke a letter of eligibility issued pursuant to Labor Code section 3201.5; (2) revoke the recognition given to the labor-management agreement negotiated pursuant to Labor Code section 3201.7; or (3) take such other steps as he or she deems necessary to secure the parties' compliance with reporting requirements.

Authority: Sections 133, 3201.5, and 5307.3, Labor Code. Reference: Sections 3201.5, 3201.7, and 3201.9, Labor Code.

Glossary⁵

This glossary gives brief explanations of terms that are commonly used in workers' compensation. These are not the full legal definitions.

AOE/COE

"Arising out of and in the course of employment," or caused by a worker's job and occurring while working. An injury or illness must be AOE/COE to be covered by workers' compensation.

Accepted claim

A workers' compensation claim in which the claims administrator agrees that the worker's injury or illness is covered by workers' compensation. Even if a claim is accepted, however, there may be delays or other problems. *Also called "admitted claim."*

Agreed medical evaluator (AME)

A doctor who is selected by agreement between the injured worker's attorney and the claims administrator to conduct a medical examination and prepare a medical-legal report to help resolve a dispute.

Agreed medical provider

A medical provider on a list that labor and management have compiled.

Alternative Dispute Resolution (ADR)

A system for providing information and resolving disputes over medical treatment and compensation issues within a carve-out.

Alternative work

If your treating physician reports that you probably will never be able to return to the same job or working conditions that you had before you were injured, your employer is permitted to offer you alternative work instead of vocational rehabilitation benefits. This is work that is different from your old job. It must last at least 12 months and be within a reasonable commuting distance of where you lived at the time of injury.

Americans With Disabilities Act (ADA)

A federal law that prohibits discrimination against disabled persons. Employment provisions of the ADA are administered by the U.S. Equal Employment Opportunity Commission (EEOC).

⁵This section is taken from "Workers' Compensation in California A Guidebook for Injured Workers," prepared for the Commission on Health and Safety and Workers' Compensation by the Institute of Industrial Relations (IIR), University of California at Berkeley and the Labor Occupational Health Program (LOHP), Center for Occupational and Environmental Health, School of Public Health, University of California at Berkeley, 2002.

Appeals Board

A group of seven commissioners who review and reconsider decisions of workers' compensation administrative law judges.

Applicants' attorney

A lawyer who represents injured workers in their workers' compensation cases. "Applicant" refers to the injured worker.

Arbitration

A potential stage of an alternative dispute resolution process in which an impartial third party, called an arbitrator, evaluates the issues and renders a judgment, called an award, to the injured worker.

Cal/OSHA

The Division of Occupational Safety and Health, which is a state agency that inspects workplaces and administers laws to protect the health and safety of workers in California.

California Labor Code section 132a

A state workers' compensation law that prohibits discrimination against injured workers and co-workers who testify in the injured worker's case.

Carve-out

A carve-out is an alternative to dispute resolution procedures in the state workers' compensation system. It is created through a collective bargaining agreement.

Challenge

Disagree with, object to, or place in dispute.

Claim Form (DWC-1)

A form that a worker uses to report a job injury or illness to the employer.

Claims adjuster

See "claims administrator."

Claims administrator

A person who handles workers' compensation claims for employers. Most claims administrators work for insurance companies or other organizations that handle claims for employers. Some claims administrators work directly for large employers that handle their own claims. *Also called "claims examiner" or "claims adjuster."*

Claims examiner

See "claims administrator."

Compromise and release (C&R)

A type of settlement where the worker receives a lump sum payment and may become responsible for paying for future medical care for the injury.

Cumulative injury

An injury that was caused by repeated events or repeated exposures at work. Examples: hurting your wrist from doing the same motion over and over, losing your hearing because of constant loud noise

Date of injury

If the injury was caused by one event (a specific injury), this is the date of the event. If the injury was caused by repeated exposures (a cumulative injury), this is the date that the worker knew or should have known that the injury was caused by work.

Death benefits

Payments to the spouse, children, or other dependents of a worker who dies from a job injury or illness.

Delay letter

A letter sent by the claims administrator to the injured worker that explains why payments are delayed, what information is needed before payments will be sent, and when a decision will be made about the payments.

Denied claim

A workers' compensation claim in which the claims administrator believes that the worker's injury or illness is not covered by workers' compensation, and has notified the worker of this decision.

Description of Employee's Job Duties (RU-91)

A form that is filled out jointly by the injured worker and the claims administrator, to enable the treating physician to determine whether the worker will be able to return to his or her usual job and working conditions.

Disability rater

An employee of the state Division of Workers' Compensation who rates an injured worker's permanent disability after reviewing medical reports or medical-legal reports that describe the worker's condition

Disability rating

See "permanent disability rating."

Dispute

A disagreement about a worker's entitlement to payments, services, or other rights and benefits

Division of Workers' Compensation (DWC)

A state agency that administers workers' compensation laws in California and provides information and assistance to injured workers and others about the workers' compensation system.

Fair Employment and Housing Act (FEHA)

A state law, administered by the California Department of Fair Employment and Housing, that prohibits discrimination against disabled persons. In some areas, the FEHA is more protective than the federal Americans With Disabilities Act (ADA).

Family and Medical Leave Act (FMLA)

A federal law, administered by the U.S. Department of Labor, that requires most employers of 50 or more employees to grant unpaid leave, without loss of job, to workers with serious health problems or who need to care for a child or other family member.

Filing

Sending or delivering a document to an employer or a governmental agency as part of a legal process. The date of filing is the date the document is received.

Findings and Award

A written decision by a workers' compensation administrative law judge about an injured worker's case, including payments and future medical care that must be provided to the worker.

Health Care Organization (HCO)

An organization that contracts with an employer or insurer to provide managed medical care in the California workers' compensation system.

Hearing

In the state workers' compensation system, a legal proceeding or event where a workers' compensation administrative law judge holds a meeting to discuss issues or receives information from different persons in order to make a decision about a dispute or a proposed settlement. In a carve-out, there may be different procedures for mediation or arbitration.

In a carve-out, there may be different procedures for mediation or arbitration.

Indemnity benefits

Benefits provided to an injured worker who is no longer able to work.

Informal conciliation

Another term for mediation, a potential stage of an alternative dispute resolution process.

Injury and Illness Prevention Program (IIPP)

A health and safety program that employers are required to develop and implement. This requirement is enforced by Cal/OSHA.

Judge

See "workers' compensation administrative law judge."

Labor-Management Agreement

The agreement between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes any of the

following: an alternative dispute resolutions system; the use of an agreed list of providers of medical treatment; the use of an agreed list of qualified medical evaluators and agreed medical evaluators; a joint labor-management safety committee; a return to work programs; and a retraining program.

Mediation

A potential stage in an alternative dispute resolution process where the Ombudsman assists the injured worker in the handling of a dispute.

Medical care

See "medical treatment."

Medical-legal report

A report written by a doctor that describes an injured worker's medical condition. These reports are written to help clarify disputed medical issues.

Medical treatment

A workers' compensation benefit, offered to the injured worker, that is "reasonably required to cure or relieve from the effects of the injury." *Also called "medical care.*"

Modified job

If your treating physician reports that you probably will never be able to return to the same job or working conditions that you had before you were injured, your employer is permitted to offer you a modified job instead of vocational rehabilitation benefits. This is your old job with changes that meet the doctor's work restrictions. It must last at least 12 months and pay the same wages and benefits as your old job.

Objective factors

Measurements, direct observations, and test results that a treating physician, a qualified medical evaluation (QME), or an agreed medical evaluator (AME) describes as contributing to the determination of an injured worker's permanent disability.

Ombudsman

The ombudsman is an expert who may be hired to help employees resolve workers' compensation treatment and compensation issues. The ombudsman can act as a liaison between the injured worker, the insurance company, and medical providers.

P&S report

A medical report written by a treating physician that describes the injured worker's medical condition when it has stabilized. *See also "permanent and stationary."*

Penalty

A fine charged to an employer or claims administrator and paid to the injured worker. It can refer to an automatic 10% penalty for a delay in one payment, or a substantial penalty for unreasonable delays in one or more payments.

Permanent and stationary (P&S)

The point at which a doctor reports that the injured worker's condition has stabilized, or is not expected to get any better or any worse. *See also "P&S report."*

Permanent disability (PD) benefits

Payments to a worker whose job injury permanently limits the kinds of work that he or she can do.

Permanent partial disability (PPD) benefits are payments to a worker who can still work, but whose ability to compete in the open labor market is reduced.

Permanent total disability (PTD) benefits are payments to a worker who is considered permanently unable to compete in the open labor market.

Permanent disability rating

A percentage that estimates how much a job injury permanently limits the kinds of work the worker can do. It is based on the worker's medical condition, date of injury, age when injured, and occupation when injured.

Personal physician

A doctor licensed in California with an M.D. degree (medical doctor) or a D.O. degree (osteopath), who has treated the injured worker in the past and has his or her medical records.

Physician

A medical doctor, an osteopath, a psychologist, an acupuncturist, an optometrist, a dentist, a podiatrist, or a chiropractor licensed in California. *The definition of "personal physician" is more limited. See above.*

Predesignation

Telling your employer in writing, before getting hurt on the job, that you wish to be treated by your personal physician in case of job injury. If you predesignate, you will be allowed to be treated by your personal physician right after injury, instead of a physician selected by your employer or the claims administrator.

In a carve-out, predesignation may or may not be allowed. If it is not allowed, the employee may choose a physician from a list of agreed medical providers.

Primary treating physician (PTP)

See "treating physician."

Qualified medical evaluator (QME)

A doctor who is selected by either the injured worker, the worker's attorney, or the claims administrator to conduct a medical examination and prepare a medical-legal report to help resolve a dispute. QMEs are certified by the state Industrial Medical Council.

Rating

See "permanent disability rating."

Reconsideration

A legal process for appealing a decision made by a workers' compensation administrative law judge or an arbitrator.

Reconsideration of a summary rating

A process for determining whether mistakes were made in the permanent disability rating of an injured worker who does not have an attorney.

Restrictions

See "work restrictions."

Retraining

Injured workers may use the supplemental job displacement benefit (SJDB) in the form of a voucher for education-related retraining or skill enhancement, or both, at a state-approved or accredited school.

Schedule for Rating Permanent Disabilities

A state publication containing detailed information that is used to rate permanent disabilities.

Settlement

An agreement between the injured worker and the claims administrator about the workers' compensation payments and future medical care that will be provided to the worker. Settlements must be reviewed by a workers' compensation administrative law judge, to determine whether they are adequate.

Social Security disability benefits

Long-term financial assistance for totally disabled persons. These benefits are administered the U.S. Social Security Administration. They may be reduced by workers' compensation payments that you receive.

Specific injury

An injury that was caused by one event at work. Examples: hurting your back in a fall, getting burned by a chemical that splashes on your skin, getting hurt in a car accident while making deliveries.

State Disability Insurance (SDI)

Short-term financial assistance for disabled workers in California. Workers with job injuries may apply for SDI when workers' compensation payments are delayed or denied. These benefits are administered by the state Employment Development Department.

State average weekly wage

The average weekly wage that was paid in the previous year to employees in California who were covered by unemployment insurance, as reported by the U.S. Department of Labor.

Stipulations with request for award (Stips)

A type of settlement where the claims administrator usually agrees to continue paying for medical care for the injury.

Subjective factors

The amount of pain and other symptoms reported by an injured worker, which cannot be directly measured or observed, that a doctor describes as contributing to the worker's permanent disability.

Supplemental job displacement benefit (SJDB)

The supplemental job displacement benefit (SJDB) provides for payment in the form of vouchers to be used at state-approved or accredited schools for education-related retraining or skill enhancement or both. Up to 10 percent of the SJDB can be used for counseling.

Temporary disability (TD) benefits

Payments to an injured worker who loses wages because the injury prevents the worker from doing his or her usual job while recovering.

Temporary partial disability (TPD) benefits are payments to a worker who can do some work while recovering, but who earns less than before the injury.

Temporary total disability (TTD) benefits are payments to a worker who cannot work at all while recovering.

Treating doctor

See "treating physician."

Treating physician

The doctor who is responsible for managing the overall care of the injured worker and who writes medical reports that affect the worker's benefits. *Also called "primary treating physician (PTP)" or "treating doctor."*

Uninsured Employers Fund (UEF)

A possible source of workers' compensation benefits for an injured worker whose employer is illegally uninsured in California. These benefits are administered by the state Division of Workers' Compensation.

Vocational rehabilitation

A workers' compensation benefit for injured workers who are permanently unable to do their usual job, and whose employers do not offer other work. It includes job placement counseling to help the worker find another job. It may also include retraining and a vocational rehabilitation maintenance allowance. Repealed for injuries on or after January 1, 2004, and replaced by SJDB.

Work restrictions

A doctor's description of clear and specific limits on an injured worker's job tasks, usually designed to protect the worker from further injury.

Workers' Compensation Appeals Board (WCAB)

The Appeals Board and workers' compensation administrative law judges in the state system.

Workers' compensation administrative law judge

An employee of the state Division of Workers' Compensation who makes decisions about disputes and approves settlements. They hold hearings at Workers' Compensation Appeals Board (WCAB) offices, and their decisions may be reviewed and reconsidered by the Appeals Board. *Also called "workers' compensation judge."*

In carve-out agreements, ADR may take the place of hearings by a workers' compensation judge.

Workers' compensation judge

See "workers' compensation administrative law judge."

REFERENCES

California Commission on Health and Safety and Workers Compensation, 2002-2003 Annual Report, December 2003.

Institute of Industrial Relations (IIR), University of California, Berkeley, and the Labor Occupational Health Program (LOPH), Center for Occupational and Environmental Health, School of Public Health, University of California at Berkeley, Workers' *Compensation in California A Guidebook for Injured Workers*, 2002.

Labor Occupational Health Program, University of California at Berkeley, *Collective Bargaining for Health and Safety A Handbook for Unions*, 2000.

Labor Occupational Health Program, University of California at Berkeley, California Workers' Compensation Fact Sheets #1, 2, 3A, 3B, 3C; For More Information, Commission on Health and Safety and Workers' Compensation, February 1998.

Levine, David I., Frank Neuhauser, Richard Reuben, Jeffrey S. Petersen, and Cristian Echeverria, "Carve-outs" in Workers' Compensation: An Analysis of Experience in the California Construction Industry, Commission on Health and Safety and Workers' Compensation, September 1999.

Levine, David I., Frank Neuhauser, Richard Reuben, Jeffrey S. Petersen, and Cristian Echeverria, "Carve-outs" in Workers' Compensation: An Analysis of Experience in the California Construction Industry, W. E. Upjohn Institute for Employment Research, Kalamazoo, Michigan, 2002.

Sum, Juliann and Laura Stock, *Navigating the California Workers' Compensation System: The Injured Workers' Experience*, Commission on Health and Safety and Workers' Compensation and the Labor Occupational Health Program, University of California at Berkeley, July 1996.